~~15 C**d~~

NOTES of CASES
IN
POINTS of PRACTICE
TAKEN IN THE
Court of Common Pleas
At WESTMINSTER;

From MICHAELMAS Term 1732, to HILARY Term 1756 incluſive.

Formerly publiſhed with the Approbation of the JUDGES of the ſaid COURT,

In Two VOLUMES and a SUPPLEMENT.

MVSEVM BRITANNICVM

The SECOND EDITION Reviſed and Corrected;

TO WHICH IS ADDED,

A Continuation of CASES to the End of the Reign of King GEORGE the Second.

By HENRY BARNES one of the SECONDARIES.

WITH

A TABLE, containing the NAMES of the CASES,

AND AN

INDEX of the PRINCIPAL MATTERS.

LONDON:
Printed by W. STRAHAN and M. WOODFALL, Law-Printers to the King's
Moſt Excellent Majeſty;
For WILLIAM OWEN, in FLEET-STREET.
MDCCLXXII.

FH
MVSEVM
BRITANNICVM

George Gabell Gent one of the Clerks of Elias
one of the sworn Attornies in the Office of
the Clerks of the Pleas in the Court of Exchequer
has by a writt issuing out of the Exchequer
& ret: there arrested Richard Spooner Gent:
one of the Attys of the Comon Pleas for —
~~Twenty pounds~~ One hundred and forty
pounds on promises — Bail for 70 £.
Deft is determined to try their supposed
right of one Atty arresting anr of a
different Court — See ~~[illegible]~~ Summ agt
Ashaw in Barnes. and Ratcliffe v Borley
2: Strange 1141. —

Please to draw a writt of Priviledge
or advise what will be the proper mode
for Deft to have the Question determined
And as Deft is in Cust: you'll please
to give the matter dispatch —

If the Plaintiff and Defendant were Attornies of the same Court, the Deft might be discharged on common Bail upon Motion for that Purpose. But as they are Attornies of different Courts, the Deft cannot be relieved otherwise than by pleading his Privilege

in Abatement. He should therefore put in Special Bail to the ot
and when the Pltf shall have declared against him he may plead
such Plea, as it appears by Stra. 864. And this I conceive to be th
most proper, if not the only, Mode in which the Question can
be determined in the present Action. As to the Question itsel
I am of Opinion, that if an Attorney of one Court sue an Attorn
of another Court, the Privilege of the latter is destroyed by
the Privilege of the former, and consequently that the Plea
above mentioned will not avail Mr Spooner. The Case of Lande
v. Cockayn in C.B. Trin. 17 & 18 Geo. 2. in 2 Barnes 35 is in Point to this
Purpose; and this Case is subsequent to that of Lunn v. Ascough above
cited. The Case cited from Strange was of two Attornies of the same Court

M Dodson

Boswell Court.
23. 1781.

Gabell
v.
Spooner } Case & Instructions

Mr Dodson is respectfully desired to look into this Matter immediately

Shepheard

Boswell Ct: ½ Ga

A
TABLE
OF THE
HEADS.

ACTIONS Real. Page 1
Amendments. 3
Arreſt. 27
Attachment. 27
Attornies, Warrants of Attorney, *&c.* 36
Award, Submiſſion, *&c.* 54

Bail, Bail-Bonds, and Surrenders in Diſcharge of Bail. 59

Compoſition. 118
Coſts and Bills of Coſts. 118

Damages. 153
Demurrer and other Special Arguments. 155
Deaf and Dumb Perſons. 168
Diſcontinuance. 169

Ejectments. 171
Error. 194

A Table of the HEADS.

Evidence. *Page* 195
Executions, Execution of Proceſs, *&c.* 196

Fine. 214

Habeas Corpus & Procedendo. 221

Imparlance. 224
Inquiry. 228
Inſpection of Court-Rolls, *&c.* 235
Judgments. 238
Juriſdiction. 497

Money, Goods, *&c.* brought into Court. 279
Mutual Debts. 290

Notice and Countermand. 291
Non-pros, Nonſuit, *&c.* 311

Outlawry. 319

Pauper. 328
Pleadings, and Time to plead. 328
Priſoners. 36
Proceſs, Service thereof, Rules, *&c.* 403
Prohibition. 427

Reference. 428
Replevin. 429
Reſcous. 429

Scire Facias. 431
Soldiers. 432
Superſedeas. 434

Trials, Verdict, *&c.* 435

Variance. 475
Venue and *Venire Facias.* 477

Addenda. 494

Omitted Caſes. 497

A
TABLE
OF THE
NAMES of the CASES.

A.

ABBOT *and* Lord St. John, *Page* 441
Adams *and* Sibthorpe, 40
Adkins *verſus* Worthington, 331
Adlam & Brown *and* Matravers, 431
Aiſlabie *and* Craven, 251
Allen's *Caſe*, 38
Allen & al' *v.* Maxey, 120
Allen *and* Dixon, 280
Allen *and* Heathfield, 332
Almond *and* Squire, 297
Alſop *v.* Bagott, 292
Alſop *v.* Nichols, 293
Alderton *and* Ward, 84
Ambroſe *and* Huckle, 70
Amey *v.* Garlick, 246
Amery *v.* Smith, 412
Anderſon *and* Henley, 80
Anderſon *and* Eaglesfield, 427
Anderton *and* Craven, 251
Androvin *v.* Baſſen, 341
Anger *v.* Wilkins, 478
Anonymous, 280, 294, 436, 279, *Page* 407
Arden *verſus* Lamley, 250
Armſtrong *and* Woods, 78
Armſtrong *and* Prudhoe, 256
Arne *v.* Needler, 30
Arnold *v.* Thompſon, 119
Aſh *and* Felton, 177
Aſhby *and* Sheridan, 403
Aſhſburne *and* Simpſon, 79
Aſhley *v.* Sutton, 380
Aſhton *v.* Molineux, 122
Aſpley *v.* Croſley, 54
Aſtley *and* Heath, 61
Atkinſon *and* Featherſtonehaugh & ux'. 373
Atterbury *v.* Ward, 60
Atterbury *v.* Troward, 250
Atwood *v.* Meredith, 300
Aucher *v.* Hamilton, 65
Abdy *v.* Hopkins, 391
Abſalom *v.* Knight, &c. 450
Acklam and others *v.* Malton, 138
Acklom *v.* Malton, 421
Adams *v.* Peck, 396

Adey

A TABLE of the Names of the CASES.

Adey *verſus* Bradley, *Page* 491
Alanſon *v.* Watt, 394
Alderſon *v.* Dodding, 359
Aldrick *v.* Salmon, 399
Allen *v.* Dallyſon, 33
Allen *v.* Boyer and others, 47
Allen *v.* Braithwaite, 309
Allen *v.* Grie, 414
Andrew *v.* Tutton, 448
Anonymous, 467, 389, 385, 15, 100
Anonymous *v.* Ferguſon, 310
Apperley *v.* Thomas, 17
Appleton *v.* Jarrat, 457
Aſcough *v.* Lunn, 43
Archer *v.* Barnſley, 114
Armſtrong *v.* Woolſey. 467
Adderley *v.* Harvey, 470, 471
Aſline *v.* Parker. 472
Aſhley *v.* Mackarley, 424
Atkinſon *v.* Taylor, 427
Aſh *v.* Day, 384
Aſhedowne *v.* Fiſher, 206
Aſhedowne *v.* Fiſher, 386
Aſhley *v.* Stockwell and others, 324
Aſkham *v.* Lewis, 489
Atkings *v.* Taylor, 285
Atkinſon *v.* Fawkes, 268
Atkinſon *v.* Hartley alias Green, 317
Atkinſon *v.* Thompſon, 354
Atkinſon *v.* Dixon, 423
Atterbury *v.* Sweetapple, 211
Auſtin *v.* Roſs, 287
Aylmer and others *v.* Roe, 236
Atkinſon *v.* Freeburrow, 400

B

Backhouſe *and* Kirwood, 171
Badtitle *and* Peaſe, 336
Bagott *and* Alſop, 292
Baker *and* Townſhend, 31
Baker *and* Clarke, 68
Baker *v.* Petcher, 440
Baker *v.* Holmer, 367, 369
Balderidge *verſus* Paterſon, *Page* 172
Baldock *and* Braty, 302
Baldwin *v.* O' Carroll, 380
Baldwin & al' *and* The King, 430
Bambridge *and* Huggins, 81, 83, 383
Bambridge *and* Price, 297
Bangs *v.* Bangs, 119
Bant *and* Harry, 8
Barker *v.* Palmer, 382
Barnes's *Caſe*, 38
Barnes *v.* Ward, 42
Barnett *v.* Greaves, 339
Barritt *and* Davenhill, 337
Bartholomew *v.* Goulding, 291
Bartlett *and* Sheers, 484
Barton *v.* Baynes, 27, 153
Baſſen *and* Androvin, 341
Baſtard *v.* Jutſham, 444
Bath and Wells (*Biſhop*) and Bond *and* Gibſon, 239
Baylie and Ryder *and* Cotton & Tyrrel, 215
Baynes *and* Barton, 27, 153
Baynes *v.* Lutwidge, 340
Beale *and* Blunt, 320
Bean *and* Turner, 345
Beauchamp & Burt *ex parte*, 177
Beech *v.* Paxton, 367
Beeſton *and* Lloyd, 295
Beezley & Brown *and* Swetland, 4
Bell *and* Zouch, 118
Belſhaw *v.* Porter, 478
Belwood *v.* Chambers, 248
Benn *v.* Denn, 180
Benn *v.* Geary, 331
Benn *and* Parrot, 195
Bennet *v.* Sydenham & Skinner, 320
Bennett *and* Willis, 443
Bennett *v.* Sampſon, 407
Bennington *and* Goodtitle, 75
Berriman *v.* Gilbert & ux'. 203, 382
Bett *v.* Goodman & al', 70
Bickley *v.* Mackrell, 481
Biddle *and* Napper, 334
Billing *v.* Billing, 312

Bingham

Bingham *and* Wreathock, *Page* 476
Birbeck *verſus* Hughes, 173
Birch *v.* Douglaſs, 63
Birch *v.* Graves, 74
Birch *v.* Spinks, 72, 338, 434
Biſhop *v.* Huggins, 38
Biſhop *and* Steward, 60
Biſhop *and* Heber, 169
Biſhop *and* Dorrell, 384
Blackhall *v.* Gould, 407
Blackſtock *v.* Payne, 487
Blackwell *and* Foſter, 7
Bland *v.* Featherſtone, 118
Blaxland *v.* Burges, 245
Blaxland *and* Gouthouſe, 486
Blick *v.* Halpenn & ux'. 67
Blunt *v.* Beale, 320
Body *and* Jones, 343
Bond *v.* Jacob & al', 200
Bond & al' *v.* Jope, 224
Booth *and* Bray, 252
Boſanquet *v.* Rondeau, 245
Boſvile *v.* ———, 126
Bowell *and* King, 329
Bouchef *and* Caſtle, 480
Bourne *v.* Church, 442
Bowes *and* Sherwyn, 499
Bowes *and* Peachy, 368
Bowler *v.* Owen, 432
Box *v.* Read & al', 482
Boyes *v.* Twiſt, 292
Boyle *and* Gorman, 297
Breacher *v.* Cotton, 123
Bradford *and* Lee, 300
Bradley *and* Lazenby, 244
Bramble *and* Taylor, 6
Braſier *and* Holman, 320
Braty *v.* Baldock, 302
Bray *v.* Booth, 252
Breedon *and* Hale, 4
Brignall *and* Farrance, 241
Brigſtock & al' *and* Huddleſton, 436
Britton *v.* Dickerſon, 120
Broadfield *and* Poole, 330, 431
Bromſal *and* Ketle, 230
Browne *v.* Shipman, 5
Browne *v.* Hammond, 10
Browne *and* Ibbotſon, *Page* 124
Browne *verſus* Kidney, 155
Browne *v.* Godfrey, 255
Browne *and* Champneys, 440
Browne *v.* Holyoak, 290
Browning *and* Stephenſon, 56
Bruce *and* Maſon, 66
Bryan *v.* Holloway, 279
Bryan *v.* Smith, 486
Buck *v.* Warren, 339
Buckby *v.* Lord Griffin, 482
Bud *v.* Milward, 442
Bulman *and* Cremer, 67
Buncombe *v.* Love & ux'. 406
Bunting *v.* Teaſdaile, 231
Burges & al' *and* Grimſtone, 176
Burges *v.* Nightingale, 230
Burges *and* Blaxland, 245
Burges *v.* Pollamounter, 281
Burgeſſes of Wiſbich *v.* Frier, 332
Burnand *v.* Standing, 332
Burnett *v.* Kendall, 342
Burnham *and* Ford, 340
Burrowes and Kirke, 375
Burton *and* Farmer, 9
Burton *and* Newby, 483
Butler *v.* Pincent, 41
Butler *v.* Johnſon, 301
Butler *and* Mabſon, 382
Butterworth *and* Newman, 66
Byas & ux' & Goodfleſh *v.* Lyell, 407, 409
Byers *v.* Whitaker, 406
Baily *v.* Richardſon, 35
Bagſhaw *v.* Toogood, 185
Bailey *v.* Semple, 307
Baker *v.* Donelly, 154
Baker *v.* Dowding, 161
Baker *v.* Dowding, 345
Baker *v.* Barlow, 225
Baker *v.* Barlow, 269
Ball *v.* Ruſſell, 455
Banks *v.* Bullock, 352
Barber *v.* Wilſon, 312
Barber *v.* Speed, 321
Barber *v.* Satchwell, 326
Barker *v.* Biſhop of London, 147
Barlow *v.* Baker, 225

A TABLE of the Names of the CASES.

Barlow *verſus* Baker, *Page* 269
Barlow *v.* Highmore, 421
Barham *v.* Moorhouſe, 140
Barnard *v.* Mordaunt, 110
Barnes *v.* Jerſey, The Earl of, 168
Barnſley *v.* Archer, 114
Barrowclough *v.* Webſter, 143
Barry, commonly called Lord Buttevant, *v.* Vilmott, 44
Badtitle *v.* Goodtitle on Demiſe of Gardiner, 191
Barber *v.* Nunn & others, 218
Baldwin *v.* Tudge, 237
Barnard *v.* Irwin, 278
Barker *v.* Phillips, 289
Balchen *v.* Clarke, 471
Barry, commonly called Lord Buttevant, *verſus* Meredith, 393
Barry *v.* Lacy and Garrick, 20
Barry *v.* Lacy and Garrick, 359
Bartlett *v.* Spooner, 461
Baſkerville *v.* Chaffey, 99
Bate *v.* Crane, 287
Bateman *v.* Gladman, 418
Batty *v.* Royden, 284
Bayley *v.* Houldſton, 351
Baynham *v.* Dalrymple, 388
Bax *v.* Culmer, 422
Baxter *v.* Overton, 102
Beard alias Farmer *v.* Wingfield, 419
Beart *v.* Lowe, 210
Beaton *v.* Green, 286
Beaumand *v.* Stewart, 18
Beaumont *v.* Coſins, &c. 17
Beaumont *v.* Norman, 453
Beard *v.* Norman, 113
Bedford, The Duke of, *v.* Bray, 491
Beckman *v.* De Witt, 115
Beere *v.* Brooking, 317
Bell *v* Pepiatt, 316
Bell *v.* Croſsthwaite, 363
Bell *v.* Simpſon, 500
Bennington *v.* Wright, 286
Benſon *v.* The Brewers Company, 236
Benſon *v.* Hemming, 353
Bentley *verſus* Scott, *Page* 317
Betts *v.* Egerton, 212
Betts *v.* Flemming, 349
Bevan *v.* Jones, 204
Bickerton *v.* Lewis, 275
Bigbie *v.* Linthwaite, 398
Biggs *v.* Roberts, 146
Billers *v.* Bowles, 233
Billingſley *v.* Craven, 47
Bingham *v.* Gregg, 182
Bingham *v.* Davis. 353
Baylies *v.* Long, 493
Brodie *v.* Tickell, 35
Barclay *v.* Green, 325
Beaſley *v.* Smith, 402
Baldwin *v.* Brookes, 468
Bird *v.* Staple, 214
Bird *v.* Foſter, 19
Biſcoe *v.* Lord, 24
Blackmore *v.* Smith, 307
Blades *v.* Reynolds, 108
Blake *v.* Flemming, 274
Blanchett *v.* Read, 308
Blatchford *v.* Honiwill, 131
Bligh *v.* Cope, 141
Bludwick and Wife *v.* Uſborne, 19
Bold *v.* Ring, 20
Boon *v.* Wood. 20
Boſanquet *v.* Littlehales, 162
Boſton, The Mayor and Burgeſſes of, *v.* Marquand, 416
Boſwell *v.* Roberts, 422
Bothwright *v.* Langley, 232
Bouch *v.* Wignall, 171
Boulton *v.* Poole, 139
Bowen *v.* Murray, 21
Bowen *v.* Follett, 96
Bowler *v.* Jenkin, 305
Bowles *v.* Billers and Knight, 233
Bownas *v.* Wilcock, 360
Boyer *v.* Allen, 47
Bradley *v.* Adey, 491
Bradley *v.* Pinchbeck, 115
Braithwaite *v.* Allen, 309
Bray *v.* The Duke of Bedford, 491
Brewer *v.* Matthews, 350
Brewers Company *v.* Benſon, 236

Bridgewater

A TABLE of the Names of the CASES.

Bridgewater *verſus* How, *Page* 117
Bright *v.* Jackſon, 144
Bright *v.* Gentleman, 416
Brimmer *v.* Marks, 18
Briſtow *v.* Thompſon, 205
Briſtow *v.* Trappet, 352
Britten *v.* Teaſdaile, 48
Britton *v.* Peirce, 462
Broadbent *v.* Wilkes, 15
Boman *v.* Noright, 194
Baldwin *v.* Blayer, 213
Birkett *v.* Watts, 220
Bragg *v.* Harriſon, 403
Brookes *v.* Baldwyn, 468
Bull *v.* Laſſiter, 466
Broadbent *v.* Wilkes, 133
Broadbent *v.* Wilkes, 266
Brooking *v.* Beere, 317
Brookes *v.* Stephenſon, 33
Brough *v.* Rayner, 89
Broughton *v.* Smithſon, 265
Brown *v.* Ibbetſon, 129
Browne *v.* Gaſcoigne, 227
Browne *v.* Hagen, 357
Browne *v.* James, 362
Browne *v.* Hedley, 389
Brumwell *v.* Garnett, 165
Buckle *v.* Lucas, 264
Bulling *v.* Rogers, 278
Bullock *v.* Banks, 352
Bullythorpe *v.* Turner, 353
Bulſtrode *v.* Kettle, 310
Bunton *v.* Studwell, 95
Burdus *v.* Satchwell, 208
Burdus *v.* Shorter, 222
Burgeſs *v.* Halding, 165
Burnand *v.* Burnand, 351
Bury *v.* Proctor, 450
Button *v.* Crabb, 355
Blayer *v.* Baldwin. 213

C.

Cain *v.* Molineux, 374
Calveraq & ux' *v.* De Miranda, 76
Calveraq & ux' *v* Pinhero, 84
Calveraq *verſus* Pinhero, *Page* 343
Camp *v.* Gale, 247
Cantrel *v.* Graham, 69
Capel *and* Han, 199
Carliſle (Biſhop) & al' *and* King, 19
Carruthers *v.* Lamb, 120
Carruthers *and* Fiſher, 202
Carter *v.* Manſbridge, 55
Carter *and* Oſborne, 319
Carter *v.* Uppington, 437
Cartlidge *v.* Eyles, 442
Cartwright *v.* Gardiner, 7
Caſtle & ux' *v.* Whitaker, 371
Caſtle *v.* Boucher, 480
Catlin *v.* Elliot, Hunt & Drew, 341
Carmur *and* Hadderweek, 61
Cantham *and* Freeman, 1
Cave *v.* Price, 30
Chambers *and* Bellwood, 248
Chambers *and* North, 319
Chamberlain *and* Hampſon, 3
Chamberlayne *and* Sellon, 444
Champion *v.* Townſhend, 80
Champneys *v* Browne, 440
Chance *v.* Ruſſel, 404
Chanklin *v.* J'Anſon, 298
Chapman *and* Gale, 29
Chapman *and* Geale, 291
Chapple & al' *v.* Chapman, 122
Charles *v.* Lord Molineux. 69
Charlewood *and* Pigot, 200
Charlton *v.* Hankey & al, 245
Cheſhire *and* Teale, 82
Chiſvers *v.* Lambert & Weſtley, 229
Chorke *and* Ellis, 485
Chriſtmas *v.* Chaſe, 119
Chriſtophory *v.* Otto, 302
Church *v.* Jaſon, 241
Church *v.* Fendall, 339
Church *and* Bourne, 442
Clapham's *Caſe*, 298
Clarke *v.* Cotton, 3
Clarke *and* Shipway, 32
Clarke *v.* Stone, 36
Clarke *v.* Baker, 68
Clarke *v.* Taylor, 124

A TABLE of the Names of the CASES.

Clarke *verſus* Venner, 377
Clarkſon *v.* Phyſick, 203
Clayton *v.* Stapp, 379
Cleaver *and* Grimes, 255
Clegg *and* Harriman, 67
Cliffe *and* Grave, 445
Coates *v.* Hammond, 304
Coates *v.* Midgley, 7
Cock *v.* Kerridge, 379
Cockerell *and* Craſter, 481
Coclough *and* Ward, 480
Coe *and* Rudd, 55
Coghlan *and* Wittingham, 80
Cole *and* Gibſon, 328
Cole *and* Durſley, 329
Cole *v.* Gouing, 477
Collins *v.* Griffin, 37
Collins *v.* Sapland & ux'. 412
Conſtable *and* Nicholſon, 333
Cook & al' *v.* Sankey, 65
Cooke *v.* Horrock, 197
Cooke *v.* Holgate, 281
Cooper *and* Greenſal, 368
Cooper & al' *v.* Levi, 372
Cooper *v.* Mills, 482
Cooper *v.* Sayer, 29
Cooper *v.* Younges, 3
Coppendale *v.* Sunderland, 42
Coppin *and* Panter, 241
Corderoy. *v.* Reynoldſon, 155
Cornet & Malpas *and* Waſs, 76
Corrance *v.* Newſom, Criſp & Smith, 428
Cortizoz *v.* Munoz, 328
Coſta *v.* Miſſaubin, 312
Cotton *and* Clarke, 3
Cotton *and* Bracher, 123
Cotton & Tyrrell *v.* Baylie & Ryder, 215
Coulſon *v.* Turnbull & al'. 246
Cowling *v.* Reynoldſon, 477
Cowper *v.* Milburn, 120
Cramborne *v.* Quennel, 201
Craſter *v.* Cockerell, 481
Craven *v.* Aiſlabie, 251
Craven *v.* Anderton, 251
Craven *v.* Hanley, 255
Creeke & al' *v.* Pitcairne, 127, 129
Cremer *verſus* Bulman, Page 67
Creſwell *and* Potts, 343
Crockay *v.* Martin, 281
Cromwell *and* Goodwin, 409
Croſley *and* Aſpley, 54
Croſs *and* Vanfleet, 170
Croſſe *v.* Porter, 339
Croſſman *and* Rye, 475
Croucher & al' *aud* Gregory, 215
Cruſe *v.* Williams, 260
Curd *v.* Eaſtmead, 260
Cutliffe *v.* Standiſh. 405
Cade *v.* Kerry, 413
Calcraft *v.* Swan, 204
Cam *v.* Gardner, 226
Cambridge, Univerſity of, *v.* Rutter, 2, 350
Carleton *v.* Wilkinſon, 86
Carr *v.* Whitehall, 465
Carr *v.* Morley, 112
Caſtell *v.* Grave, 99
Cattern *v.* Chapman, 272
Chaffey *v.* Baſkerville, 99
Chandler *v.* The Hundred of Sunning, 458
Calenda *v.* Fleetwood, 219
Challing *v.* Fox, 326
Chapman *v.* Whitby, 364
Canning *v.* Davis, 494
Chapman *v.* Cattern, 272
Chapman *v.* Ryall, 415
Charley *v.* Hedges, 273
Childs *v.* Prows, 390
Chiſhull *v.* Ingham, 15
Chriſtie *v.* Huggins, 13
Clarke *v.* Harbin, 90
Clarke *v.* Incledon, 212
Clarke *v.* Lawndy, 222
Clarke *v.* Gorrill, 313
Clarke *v.* Goodtitle, 457
Clarke *v.* Sheppard, 488
Claxton *v.* Hyde, 90
Clerk *v.* Langley, 22
Clerke *v.* Pitcairne, 129
Clixby *v.* Dinas, 348
Coates's Caſe, 385
Cockſedge *v.* Richwood, 45
Cockſedge *v.* Moyle, 459

Cokayn

Cokayn *verſus* Launder *Page* 44
Cokayne *v.* Otway, 85
Coles *v.* Haden, 44
Colli *v.* Dalrymple, 268
Colſworthy *v.* Potter, 422
Comings *v.* Hooper, 102
Cook *v.* Shone, &c. 12
Cook *v.* Detchick, 274
Cook *v.* Poole, 389
Cook *v.* Shone, 488
Cooke *v.* Fyſon, 138
Cooke *v.* Litſon, 492
Cooper *v.* Turner, 171
Cope *v.* Bligh, 141
Coriſh *v.* Kennedy, 466
Coſens *v.* Etherington, 347
Coſens *v.* Stannynought, 456
Coppendale *v.* Debonaire 213
Coleman *v.* Mayor, &c. of Exeter, 238
Courtauld *v.* Iſrael, 401
Cooper *v.* Sherbrooke, 426
Clarke *v.* Balchen, 471
Croſer *v.* Thomlinſon, 472
Coſens *v.* Palmer, 26
Coſins *v.* Beaumont, 17
Coulthruſt *v.* Poor, 98
Courtney *v.* Selman, 446
Crabb *v.* Button, 355
Cracroft *v.* Willoughby, 227
Craghill *v.* Pattinſon, 24
Crane *v.* Bate, 287
Craven *v.* Billingſley, 47
Cremor *v.* Dent, 141
Crick *v.* Grubb, 500
Croſs *v.* Skipwith, 449
Croſsthwaite *v.* Bell, 363
Crutchfield *v.* Sewords, 116
Cullum *v.* Lloyd, 347
Culme *v.* Dingle, 392
Culmer *v.* Bax, 422
Cuthbertſon *v.* Shields, 162
Cuming *v.* Hamp, 498
Cowper *v.* Stanbury, 424

D.

D'Aeth *and* Ottiwell, *Page* 254
Daffield *and* Simpſon, 254
Dakeyne *v.* Thornhill, 198
Dale *and* Ruſh, 404
Dallyhunty *and* Nichols, 79
Daman *and* White, 282
Daniel *and* Lee, 8
Daniel *and* Humphreys, 202
Darch *v.* Parry, 82
Darby *and* Wagſtaffe, 366
Darlow *v.* Duke of Wharton, 258
Davenhill *v.* Barrit, 337
Davenport *v.* Wall, 62
Davis *and* Richard, 203
Davis *v.* Hall, 379
Davies *v.* Grace, 485
Davies *v.* Manſell, 282
Dawſon *and* Jarrat, 479
Day & al' *and* Southeby, 154
Nay *and* Love, 311
Deacon *v.* Vivian, 7
Dean *and* Tidmarſh, 216
Debalfe *v.* Mackenſie, 73
Deland *and* Deriſley, 82, 83
De Miranda *and* Calveraq & ux'. 76
Denn *and* Benn, 180
Denn *and* Fenn, 181
Denny *and* Laſt, 302
Dent *v.* Lambert, 479
Dent *and* Stoneham, 487
Denton *v.* Lambert, 479
Deriſley *v.* Deland. 82, 83
Deſeriſay *v*, O'Brien, 375
Dickerſon *and* Britton, 120
Diniſon *and* Hayward, 410
Dixon *and* Hurſt, 118
Dixon *v.* Allen, 280
Dixon *v.* Fenner, 296
Dobſon *and* Hobſon, 179
Doe *and* Luſhington, 78
Doe *and* Roe, 39, 172, 181, 176, 177, 178, 179
Doe *and* Tupper, 181
Dorrell *v.* Biſhop, 384

A TABLE of the Names of the CASES.

Douglaſs *and* Birch, *Page* 63
Dover *verſus* Robinſon, 128
Downes *v.* Nichols, 497
Downes *and* Roberts, 437
Drew *and* Knapton, 279
Dubois *v.* Medlycott, 55
Duke *and* Haſlefoot, 251
Dunn *and* Gatliffe, 55
Durſlep *v.* Cole, 329
Dutton *v.* Pitt, 199
Dyer *and* Lovell, 254
Dale *v.* Robinſon, 322
Dalling *v.* Matchett, 57
Dallyſon *v.* Allen, 33
Dalrymple *v.* Colli, 268
Dalrymple *v.* Baynham, 388
Dapp *v.* Woodman, 313
Darker *v.* Edwards, 306
Davids *v.* Wilſon, 18
Davies *v.* Leckie, 94
Davies *v.* Jones, 140
Davis *v.* Skyllins, 232
Davis *v.* Bingham, 353
Davis *v.* Jones, 357
Davis *v.* Prince, 429
Davis *v.* Jordan, 489
Daw *v.* Vile, 314
Dawſon *v.* Sykes, 209
Dawſon *v.* Draper, 390
Day *v.* Aſh, 384
Day *v.* Lloyd, 149
Davey *v.* Martyn, 289
Davies *v.* Pavry, 493
Davies *v.* Canning, 494
Denn *v.* Farr, 469
Day *v.* Samſon, 448
Dean *v.* Unwin, 275
Dearſley *v.* Pay, 361
Debonaire *v.* Coppendale, 213
Deighton *v.* Foſter, 187
Delany *v.* Morley, 112
Delaval *v.* Machin, 52
Delaval *v.* Machin, 277
De Wett *v.* Beckman, 115
Dennis *v.* Fletcher, 489
Denn on Demiſe of Hildyard *v.* Fenn, 19
Dent *v.* Cremer, 14
De Revoſe *verſus* Hayman, *Page* 211
Dethick *v.* Cooke, 274
Dickinſon *v.* Ford, 160
Digge *v.* Price, 313
Dinas *v.* Clixby, 348
Dingle *v.* Culme, 392
Dixon *v.* Goodman, 413
Dixon *v.* Atkinſon, 423
Dobſon *v* Stephens, 461
Dodding *v.* Alderſon, 359
Dodgſon *v.* Wood, 278
Doe *v.* Thomas, 185
Doe *v.* Roe, 186
Doe on Demiſe of Agar *v.* Roe, 192
Doe *v.* Roe, in Ejectment, 189
Doe, on the Demiſe of Cholmondley, *v.* Roe, 455
Doe *v.* Roe on Demiſe of Fearnly, 190
Donelly *v.* Baker, 154
Dormer *v.* Gregory, 144
Dorwell *v.* Webb, 400
Dowding *v.* Baker, 161
Dowding *v.* Baker, 345
Downes *v.* Shaft, 129
Draper *v.* Dawſon, 390
Driver *v.* Scrutton, 17
Dryden *v.* Langley, 22
Duchworth *v.* Tunſtall, 184
Dunn *v.* Hutt, 346
Dunn *v.* Harman, 355
Dunning *v.* Roe, 308
Dutour *v.* Ecollier, 128
Doe *v.* Roe on Demiſe of Wright, 190
Denn *v.* Fenn on Demiſe of Knights, 191
Doe *v.* Roe on Demiſe of Leake, 193
Duggin *v.* Earl of Peterborough, 425
Doe on Demiſe of Dowley *v.* Roe, 194

A TABLE of the Names of the CASES.

E.

Eaglesfield *verſus* Anderſon, *Page* 427
Eames *and* Lutwich, 481
Eaſterby *v.* Eaſterby, 1
Eaſtmead *and* Curd, 260
Eaton *and* Hornbuckle, 221
Edmunds *and* Uſher & al'. 344
Edwards *v.* Edwards, 300
Eggleton *v.* Seneff, 475
Ellis *v.* Knowles, 174
Ellis *v.* Chorke, 485
Elliot, Hunt & Drew *and* Catlin, 341
Elliott *and* Warrington, 371
Ellwood *v.* Ellwood, 311
Elmes *v.* Tomlinſon, 230
Evans *v.* Tillam, 257
Evans *and* Pitt, 428
Ewer's *Caſe*, 66
Eyles *v.* Smart, 123
Eyles *and* Cartlidge, 442
Eagles *v.* Oſbaldeſton, 318
Eames *v.* Jew, 287
Eames *v.* Jew, 276
Eaſt *v.* Witton, 23
Eaſt *v.* Nonelly, 147
Eaſt Redford, Burgeſſes and Bailiffs of, *v.* Langley, 415
Egerton *v.* Betts, 212
Eamonſon *v.* Thomas, 365
Eaſter 16 Geo. 2. 58
Eaſter 22 Geo. 2. 100
Elliott *v.* Keeling, 399
Elliott *v.* Parrott, 425
Eaton *v.* Southby, 206
Ecollier *v.* Dufour, 128
Edwards *v.* Darker, 306
Ellis *v.* Wall, 234
Elton *v.* Manwairing, 88
Eaſter 2 G. 3. 494
Elton *v.* Thomas, 88
Engier *v.* Morris, 271
Ereſkine *v.* Holland, 100
Etherington *v.* Coſens, 347
Evans *v.* George, 34
Evening *verſus* Spearman, *Page* 99
Evereſt *v.* Sanſum, 491
Everett *v.* Price, 397
Exeter Mayor of *v.* Coleman, 238
Every *v.* Tynte, 58
Exeter Biſhop of *v.* Maſter, &c. of Univerſity College, 25

F.

Faget *v.* Vanthiennen, 59
Farmer *v.* Burton, 9
Farmer *v.* Thruſtout, 180
Farnham *and* Morſe, 242
Farettes *and* Hannot, 376
Farrance *v.* Brignall, 241
Farril *v.* Head, 41
Faulkner *and* Willims, 409
Fawcett *v.* Strickland, 443
Featherſtone *and* Bland, 118
Featherſtonehaugh & ux' *v.* Atkinſon, 373
Felton *v.* Aſh, 177
Feltham *and* Halſey, 329
Fendall *and* Church, 339
Fenn *v.* Denn, 181
Fenn *v.* Jolly & al'. 253
Fenner *and* Dixon, 296
Ferrall *and* Scott, 240
Figg *and* Warwick, 196
Finch *and* Weſtall, 406
Firebrace *and* The King, 258
Fiſher *v.* Caruthers, 202
Fiſher *and* Nevil, 338
Fitch *and* Waddington, 64
Flanders *v.* Nichols, 433
Fleetwood *v.* Poictier, 67
Fling's *Caſe*, 377
Ford *v.* Burnham, 340
Foreſt *and* Oates, 196
Forſter *v.* Pollington & ux' & al'. 216
Foſter *v.* Blackwell, 7
Foſter *v.* Smales, 295
Foſter *and* Lumley, 344
Fotherby *v.* Lloyd, 342
Fowke *and* Huſſe, 33

Fowler

A TABLE of the Names of the CASES.

Fowler *and* Philips, *Page* 441
Fray *verſus* Smith, 240, 487
Franklin *and* Savage, 280
Freeman *v.* Cantham, 1
Freeman *and* Swan, 282
Frier *and* Burgeſſes of Wiſbich, 332
Frith *and* Sydebotham, 336
Frument *and* Welland, 479
Faikney *v.* Lovibond, 110
Fairfax, Thomas, Eſquire, Vouchee, 23
Famworth *v.* Smith, 322
Farmer *v.* Neſbitt, 168
Farſide *v.* Hayley, 208
Fawſon *v.* Goodright, 184
Fawkes *v.* Atkinſon, 268
Fenn *v.* Marriott, 185
Fenn on Demiſe of Hildyard *v.* Denn, 191
Fenton *v.* Margerum, 318
Ferguſon *v.* Anonymous, 310
Fieldhouſe *v.* Lannie, 352
Finch *v.* Wilſon, 163
Filewood *v.* Smith, 110
Fenn on Demiſe of Knights *v.* Denn, 192
Fox *v.* Challing, 326
Frederick *v.* Lookup, 365
Fitzpatrick *v.* Pickering, 470
Farr *v.* Denn, 469
Fox *v.* Meens 363
Fiſher *v.* Aſhdowne, 206
Fiſher *v.* Aſhdowne, 386
Fiſher *v.* Kitchingman, 284
Fiſher *v.* Kitchingman, 449
Fitch, qui tam, *v.* Nunn, 464
Fitch, who as well, *v.* Nunn, 466
Fitzwilliams *v.* Biſhop of Hereford, 225
Fitzwilliams *v.* Biſhop of Hereford, 345
Fleming *v.* Betts and Blake, 349
Fleet *v.* Stannard, 392
Fletcher *v.* Maddock, 384
Fletcher *v.* Dennis, 489
Flower *v.* Herbert, 360
Flower *v.* Herbert, 492
Follett *v.* Trill, &c. 96
Ford and Ford *verſus* Odam, *Page* 267
Ford *v.* Dickinſon, 160
Foſter *v.* Kirkley, 2
Foſter *v.* Deighton, 187
Foot *v.* Hume, 415
Fowke *v.* Horabin, &c. 11
Fowler *v.* Wadcock, 262
Fowlis *v.* Groſvenor, 101
Francia *v.* Lumboſa de Mattos, 223
Francis *v.* Taylor, 92
Frank *v.* Richardſon, 451
Freind *v.* Hope, 36
French *v.* Manby, 323
French *v.* Knowles, 111
Froſt *v.* Whadcock, 447
Fuller *v.* Swan, 283
Freeburrow *v.* Atkinſon, 400
Furnis *v.* Hallom, 166
Fyſon *v.* Cooke, 138
Furtado *v.* Miller, 213
Fleetwood *v.* Calenda, 219

G.

Gage *v* Geugh, 28
Gale *v.* Chapman, 29
Gale *v.* Hooker, 199
Gale *and* Camp, 247
Galloway *and* Martindale, 330
Gardiner *and* Cartwright, 7
Garlick *and* Amey, 246
Garnet *v.* Heaviſide, 63
Gately *and* Ruſſel, 76
Gatliffe *v.* Dunn, 55
Geale *v.* Chapman, 291
Geale *and* Taſker, 429
Geary *and* Benn, 331
Gibſon *v.* Biſhop of Bath & Wells & Bond, 239
Gibſon *v.* Cole, 328
Gilbert & ux' *and* Berriman, 203, 382
Gimbert *and* Shaw, 369
Girdler *and* Swain, 371
Girdler *v.* Wathews, 484

Glaſcock

Glaſcock *verſus* Martin, *Page* 243
Gledhill *and* Paul, 294
Godfrey *and* Browne, 255
Goodfellow *and* Threlkeld, 224
Goodman & al' *and* Bett, 70
Goodridge *and* Wingfield, 62
Goodright *v.* Holton, 119
Goodright *v.* Tregurtha & al', 121
Goodright *v.* Wrong, 175
Goodright *v.* Moore, 176
Goodright *v.* Noright, 178
Goodright *v.* Hoblyn, 298
Goodtitle *v.* Bennington, 75
Goodwin *and* Cromwell, 409
Gorman *v.* Boyle, 297
Gough *and* Gage, 28
Gouing *and* Cole, 477
Gould *and* Blackhall, 407
Goulding *and* Bartholomew, 291
Gouthouſe *v.* Blaxland, 486
Gower & ux' *v.* Hunt, 290, 291
Gower (Lord) *v.* Heath, 445
Grace *and* Wood, 344
Grace *and* Davies, 485
Gracewood *v.* ———, 439
Graham *and* Cantrel, 69
Grave *v.* Cliffe, 445
Graves *and* Birch, 74
Gray *and* Sympſon, 197
Gray *v.* Halton, 437
Gray *v.* Saunders, 248
Greaves *and* Barnett, 339
Gregory *v.* Gurdon, 74
Gregory *and* Croucher & al'. 215
Gregory *v.* Reeves, 303
Green *v* Watkins, 294
Green *v.* Upton, 410
Greenſal *v.* Cooper, 268
Greenſmith *and* Harding, 174
Greenwood & al' *and* Horſfall, 127
Greenwood *and* Poulter, 367
Griffin *and* Collins, 37
Griffin (Lord) *v.* Bucby, 482
Griffith *and* Maurice, 32
Griffith *and* Ormond, 63
Grimes *v.* Cleaver, 255
Grimſtone *v.* Burges & al'. 176
Grubb *and* Maule, 200
Gunter *and* Macdonald, *Page* 335
Gurdon *and* Gregory, 74
Gale *verſus* Whitehead, 106
Gale *v.* Whitehead, 277
Gardiner *v.* Lawford, 96
Gerring *v.* Manning, 366
Gardiner *v.* Jeſſop, 158
Gardiner *v.* Cam, 226
Gardiner *v.* Goodall, 263
Garforth *v* Laycock, 45
Garmſton *v.* Tracey, 396
Garnett *v.* Read, 58
Garnett *v.* Brumwell, 165
Garnett *v.* Harriſon, 348
Garrick and Lacey *v.* Barry, 20, 359
Garth *v.* Green, 107
Garth *v.* Wait, 261
Garway *v.* Stephens 19
Gaſcoigne *v.* Browne, 227
Gent *v.* M'Allom, 416
Gentleman *v.* Bright, 416
Gibbs *v.* Tupigny de Maile, 398
Gilbert *v.* Gilbert, 267
Gladman *v.* Scott, 53
Gladman *v.* Bateman, 418
Glaſs *v.* Tiffin, 142
Goddard & al' *v.* Ballard, 349
Goodall *v.* Gardiner, 263
Goodenough *v.* Lamb, 358
Goodman *v.* Dixon, 413
Goodright *v.* Searle, 147
Goodright *v.* Vice, 182
Goodright *v.* Fawſon, 184
Goodtitle *v.* Lowe, 130
Goodtitle *v.* Thruſtout, 183
Goodtitle *v.* Thruſtout, 187
Goodtitle *v.* Notitle, 270
Goodtitle *v.* Clarke, 457
Gorrill *v.* Clarke, 313
Gorton *v.* Thomlinſon, 310
Goſtelow *v.* Wright, 86
Goſwell *v.* Hunt, 101
Gott *v.* Vavaſor, 164
Grave *v.* Caſtell, 99
Goodtitle on Demiſe of Gardiner *v.* Badtitle, 191

A TABLE of the Names of the CASES.

Goodtitle on Demiſe of Cowper *v.* Thruſtout, *Page* 193
Gray *verſus* Hunter, 493
Green *v.* Barclay, 325
Green *v.* Garth, 107
Green *v.* Littleton, 420
Green alias Smith, *v.* The Mayor of the Borough of Leiceſter, 492
Green *v.* Beaton, 286
Greene *v.* Hobbs, 276
Greenfield *v.* Southerton, 266
Greenhow *v.* Ilſley, 136
Greenwood *v.* Richardſon, 16
Greenwood, on Behalf of, 386
Gregg *v.* Bingham, 182
Gregg *v.* Smith, 464
Gregory *v.* Dormer, 144
Greſſingham *v.* Treherne, 87
Grey *v.* Lockwood, 132
Grie *v.* Allen, 414
Groſvenor *v* Hand, one, &c. 424
Grove *v.* Kettle, 77
Grub *v.* Crick, 500
Gun *v.* Yates, 141
Guy *v.* Wilkinſon, 314
Glover *v.* Stibbard, 364

H.

Hadderweek *v.* Catmur. 61
Haddock *and* Oſborne, 257
Hale *v.* Breedon, 4
Hale *v.* Norton, 169
Hall *and* Davis, 379
Hall *v.* Wilby, 404
Halpen & ux' *and* Blick, 67
Halſal *v.* Wedgwood, 174
Halſey *v.* Feltham, 329
Halton *and* Gray, 437
Hamilton *and* Aucher, 65
Hammond *and* Browne, 10
Hammond *v.* Woolmer, 28, 120
Hammond *and* Coates, 304
Hammond *and* Roberts, 374
Hammond *and* Toms, 370
Hampſon *v.* Chamberlain, 3
Hancock *and* Snape, 198
Hand *verſus* Kelly, *Page* 378
Handaſyd *v.* Wilſon, 334
Hankey & al' *and* Charlton, 245
Hanley *and* Craven, 255
Hann *v.* Capell, 199
Hannaford *v.* Holman, 295
Hannot *v.* Farrettes, 376
Hanſley *v.* Page, 75
Hanſlow & ux' *v.* Roberts & al'. 27
Harding *v.* Greenſmith, 174
Hardriſs *v.* Sandell, 478
Harneis *v.* Micklethwaite, 214
Harper *v.* Leech, 123
Harper *v.* Woodhouſe, 341
Harries *and* The King, 31
Harriman *v* Clegg, 67
Harris *v* Roberts, 73
Harriſon *and* Waldo, 5
Harriſon *v* Oliver, 56
Harriſon's *Caſe*, 378
Harry *v.* Bant, 8
Hartley *v.* Varley, 329
Hartop *and* The King, 10
Haſelfoot *v.* Duke, 251
Haſelwood *and* Houſe, 483
Haward *v.* Nalder, 60
Haward *and* Smith, 480
Hawkins *and* Shaw, 72
Hayes *v.* Thornton, 122, 201
Hayme *v.* Hayme, 41
Hayward *and* Hook, 170
Hayward *v.* Diniſon, 410
Head *and* Farril, 41
Heath *v.* Aſtley, 61
Heath *and* Lord Gower, 445
Heathfield *v.* Allen, 332
Heaviſide *and* Garnet, 63
Heber *v.* Biſhop, 169
Helbutt *and* Shorter, 476
Hemings *v.* Robinſon, 436
Hengeſt *and* Jones, 175
Henley *v.* Anderſon, 80
Herbert *v.* Shawe, 478
Hewit *v.* Powell, 221
Hillier *v.* James, 41
Hillſborough (Lord) *v.* Jefferyes, 438

Hillſborough

Hillſborough (Lord) *and* Roberts, *Page* 438
Hinds *and* Maugir, 487
Hoblyn *and* Goodright, 298
Hobſon *verſus* Dobſon, 179
Hodgſon *and* Moore, 239
Hodgſon *and* Maſon, 250
Hodgſon *and* Sir William Strickland, 372
Hoff *and* Smith, 301
Holgate *and* Cooke, 281
Holiday *and* Paradice, 77
Hollis *v.* Weſtbury, 301
Holloway *and* Bryan, 279
Holman *and* Hannaford, 295
Holman *v.* Braſier, 320
Holme *and* Webſter, 31
Holmer *and* Baker, 367, 369
Holtam *and* Matthews, 497
Holton *and* Goodright, 119
Holyoak *and* Brown, 290
Hook *v.* Hayward, 170
Hooker *and* Gale, 199
Hopwood *and* Makepeace, 173
Horn & Froſt *and* Kingdon, 293
Hornbuckle *v.* Eaton, 221
Horrock *and* Cook, 197
Horsfall *v.* Greenwood & al'. 127
Howſe *v.* Haſlewood, 483
Huckle *v.* Ambroſe, 70
Huddleſtone *v.* Brigſtock & al'. 436
Hudſon & al' *and* Hunt, 85
Huffe *v.* Fowke, 33
Huggins *and* Biſhop, 38
Huggins *v.* Bambridge, 81, 83, 383
Huggins *and* Smith, 236
Hughes *and* Birbeck, 173
Hughes *v.* Pellet, 330
Humfreys *v.* Ward, 331
Humphreys *v.* Daniel, 202
Humphreys *v.* Mitchell, 408
Hunt *v.* Hudſon & al'. 85
Hunt *v.* Puckmore, 155
Hunt *and* Scrape, 175
Hunt *and* Gower & ux'. 290, 291
Hurſt *v.* Dixon, 118
Huſtler *and* Wentworth, *Page* 260
Hutchins *verſus* Lillyman, 335
Hutchinſon *and* Mellor, 169
Haddock *v.* Howard, 355
Haden *v.* Coles, 44
Hagan *v.* Browne, 357
Halding *v.* Burgeſs, 165
Hall *v.* Morſe, 267
Hall *v.* Lane, 350
Hall *v.* Douglaſs 452
Hallett *v.* Hellier, 286
Hallom *v.* Furnis, 166
Halton *v.* Holmes, 362
Hammond *v.* Stewart, 33
Hanbury *v.* Heathcock, 217
Hand *v.* Groſvenor, 424
Hatchett *v.* Hughes, 160
Hall *v.* Spooner, 366
Harriſon *v.* Bragg, 403
Hanbury *v.* Cowper, 424
Hardy *v.* Moſs, 288
Hankey *v.* Smith, 449
Harbin *v.* Clarke, 90
Hardcaſtle *v.* Hutchinſon, 103
Harman *v.* Dunn, 355
Harper *v.* Sherrard, 136
Harriſon *v.* Littleton, 98
Harriſon *v.* Speight, 356
Harriſon *v.* Potter, 23
Harriſon *v.* Morris, 346
Harriſon *v.* Garnett, 348
Harriſon *v.* Whaley, 360
Harrow *v.* Naſh, 310
Hart *v.* Whitlocke, 452
Hartley alias Green *v.* Atkinſon, 317
Harvey *v.* Parker, 395
Haryes *v.* Walker, 413
Havelock *v.* Taſhburn, 306
Hawes *v.* Wetherall, 269
Hawkes *v.* White, 394
Hawkes *v.* Holt junior, 420
Hawkins *v.* Valentine, 419
Hawys *v.* Rix, 461
Hay *v.* Mann, 117
Hayley *v.* Farſide, 208
Haymam *v.* Jones, 46
Hayman *v.* De Revoſe, 211

A TABLE of the Names of the CASES.

Hayward *verſus* Wells, *Page* 489
Hayward *v.* Ogier, 333
Heathcock *v.* Hanbury, 217
Heaton, on the Behalf of, 42
Hedges *v.* Weſt, 211
Hedley *v.* Browne, 389
Heeley *v.* Hewſon, 321
Hellier *v.* Hallett, 286
Hemming *v* Benſon, 353
Herbert *v.* Flower, 360
Herbert *v.* Flower, 492
Harvey *v.* Laſſiter, 466
Harvey *v.* Adderley, 470, 471
Hamn *v.* Cuming, 498
Hereford, Biſhop of, *v.* Rutter, 2
Hereford, Biſhop of, *v.* Rutter, 350
Hereford, Biſhop of, *v.* Fitzwilliams, 225
Hereford, Biſhop of, *v.* Fitzwilliams, 345
Heron *v.* Holland, 465
Heſter *v.* Hall, 307
Hewſon *v.* Heeley, 321
Hicks *v.* Young, 458
Highham, in the Treaſury, 225
Highmore *v.* Barlow, 421
Hill *v* Wadmore, 381
Hill *v.* Whitham, 151
Hobbs *v.* Greene, 276
Hodges *v.* Charley, 273
Hodgſon *v.* Michell, 26, 114
Holdfaſt *v.* Jackſon, 133
Holland *v.* Erſkine, 100
Holland *v.* Heron, 465
Holme *v.* Halton, 362
Holt junior *v.* Hawkes, 420
Honiwell *v.* Blatchford, 131
Hooper *v.* Comings, 102
Hope *v.* Freind, 36
Hopkins *v.* Purſer, 33
Hopkins *v.* Knap, 264
Hopkins *v.* Abdy, 391
Horabin *v.* Fowke, 11
Horſley *v.* Shuter, 53
Horſley *v.* Somers, 116
Horſley *v.* Norden, 159
Horton *v.* Scarrall, 283
Horton *verſus* Turner, *Page* 132
Houghton *v.* Walnouth, 284
Houldſton *v.* Bayley, 351
How *v.* Bridgewater, 117
Howard *v.* Radbourne, 130
Howard *v.* Haddock, 355
Huggins *v.* Chriſtie, 13
Hughes *v.* Roberts, 359
Hughes *v.* Thornley, 25
Hulls *v.* Merefield, 20
Hulls *v.* Merefield, 359
Hume *v.* Foot, 415
Hughes *v.* Hatchett, 160
Hobſon *v.* Parker, 237
Hilary 7 G. 3d. 494
Hunter *v.* Gray, 493
Humes *v.* Wallace, 231
Hunt *v.* Goſwell, 101
Huſſey *v.* Ray, 104
Hutchinſon *v.* Hardcaſtle, 103
Hutt *v.* Dun, 346
Hyde *v.* Claxton, 90
Holdfaſt *v.* Leigoe, 192

I.

Jackſon *and* Ray, 121
Jackſon *and* Theedam, 238
Jackſon *and* Penrice, 485
Jacob & al' *and* Bond, 200
Jacob *v.* Marſh, 297
James *and* Hillier, 41
James *and* Newball, 434
J'Anſon *and* Chancklin, 298
Jarrat *v.* Robinſon, 333
Jarrat *v.* Dawſon, 479
Jaſon *and* Church, 241
Ibbotſon *v.* Browne, 124
Jeane *v.* Langton, 8
Jeffs *v.* Slater, 123
Jeffs *v.* Jones, 342
Jefferyes *and* Lord Hillſborough, 438
Jemmet *v.* Voyer, 296
Jenner *v.* Oatridge, 293
Jenner *v.* Williamſon, 294
Jenner *v.* Swann, 372

Jennings

Jennings *and* Southam, *Page* 6
Jenyns *and* Liſle, 81
Jeynes *verſus* Stephenſon, 124
J. Munoz *v.* Levi, 381
Inwen *and* Woodman, 9
Johannet *v.* Lloid, 27
Johns *v.* Smith, 477
Johnſon *and* Butler, 301
Jolly & al' *and* Fenn, 253
Jones *and* Williams, 6, 295
Jones *and* Lane, 77
Jones *v.* Hengeſt, 175
Jones *v.* Wilkinſon, 249
Jones *and* Jeffs, 342
Jones *v.* Body, 343
Jope *and* Bond & al'. 224
Iſlay (Earl of) *and* Pryor, 229
Ives *and* Peirſon, 332
Jury *v.* Woodhouſe & al'. 333
Jutſham *and* Baſtard, 444
Jackman *v.* Mould, 52
Jackſon *v.* Knight, 92
Jackſon *v.* Holdfaſt, 133
Jackſon *v.* Bright, 144, 146
Jackſon *v.* Warwick, 361
James *v.* Browne, 362
Jarratt *v.* Appleton and Love, 457
Ibbetſon *v.* Browne, 129
Jenkin *v.* Bowler, 305
Jenkins *v.* Malland, 93
Jeremain *v.* Ridley, 490
Jerſey, Earl of, *v.* Barnes and Lady Mary Obrien, 168
Jeſſop *v.* Gardiner, 158
Jew *v.* Emes, 276, 287
Iſley *v.* Greenhow, 136
Incledon *v.* Clarke, 212
Ingham *v.* Chiſhull, &c. 15
Jones *v.* Hayman, 46
Jones *v.* Davies, 140
Jones *v.* Bevan, 204
Jones *v.* Stephenſon, 316
Jones *v.* Davis, 357
Jones *v.* Sandys, 463
Johnſon *v.* Johnſon, 308
Johnſon *v.* Smithſon, 113
Jordan *v.* Davis, 489
Julian *verſus* Shobrooke, *Page* 108
Judge *v.* Torr, 386
Irwin *v.* Barnard, 278
Iſrael *v.* Courtauld, 401

K.

Kelley *and* Hand, 378
Kendall *and* Burnett, 342
Kent *and* Porter, 405
Kerridge *and* Cock, 379
Ketle *v.* Bromſall, 230
Kidney *and* Browne, 155
King *v.* Boſwell, 329
King *v.* Nichols, 343
Kingdon *v.* Horn & Froſt, 293
Kirke *v.* Burrowes, 375
Kirſwill *and* Wright, 376
Kirwood *v.* Backhouſe, 171
Knap & al' *and* Longbothom, 404
Knapton *v.* Drew, 279
Knight *v.* Winter, 68
Knight *and* Lee, 119
Knight *and* Lazenby, 216
Knowles *and* Ellis, 174
The King *v.* the Biſhop of Carliſle, and others, 2, 9
Keeling *v.* Elliot, 399
Kemp *v.* The Hundred of Stafford and Tickhill, 455
Kennedy *v.* Coriſh, 466
Kerry *v.* Cade, 413
Kettle *v.* Grove, 57
Kettleby *v.* Woodcock, 86
King *v.* Lever, 34
The King *v.* The Archbiſhop of York, 353
Kirkley *v.* Foſter, 2
Kitchingman *v.* Fiſher, 284
Kitchingman *v.* Fiſher, 449
Kittle *v.* Bulſtrode, 310
Knapp *v.* Hopkins, 264
Knight *v.* Jackſon, 92
Knight *v.* Remy, 101
Knight *v.* Bowles, 233
Knight *v.* Abſolom, 450

Kynaſton *verſus* Wynne, *Page* 17
Knowles *v.* French, 111

L.

L.'*s Caſe*, 39
Lacey *and* Singleton, 478
Laggett *v.* Watkins, 412
Lamb *and* Carruthers, 120
Lambert & Weſtley *and* Chiſvers, 229
Lambert *and* Dent, 479
Lambert *and* Denton, 479
Lamley *and* Arden, 250
Lancaſter *and* Noble, 125, 439
Lane *v.* Jones, 77
Lane *v.* Smith, 252
Langdell *v.* Sutton, 32
Langley *v.* Stapleton, 40
Langton *and* Jeane, 8
Langton *v.* Tuckwell, 156
Langſtaffe *v.* Lamb, 293
Lapdon *and* Warren, 249
Laſt *v.* Denny, 302
Lawrence & al' *and* Wiſe, 59
Lawrence *and* Marſhall, 333
Lawſon *and* Taylor, 251
Lazarus *v.* Pritchard, 125
Lazenby *v.* Knight, 216
Lazenby *v.* Bradley, 244
Leaver *v.* Whitcher, 253
Leaver *and* Swaile, 299
Lee *v.* Daniel, 8
Lee *v.* Knight, 119
Lee *v.* Bradford, 300
Lee *and* Mathews, 444
Leech *and* Harper, 123
Leighton *v.* Leighton, 338
Le Mark *v.* Newham, 299
Letgoe *v.* Pitt, 439
Levi *and* Cooper & al'. 372
Levi *and* J. Munoz, 381
Lewis *and* Pritchard, 304
Lillyman *and* Hutchins, 335
Ling *v.* Woodyer, 69
Liſle *v.* Jenyns, 81
Little *and* Stafford, 257
Littlehales *and* Maſon, *Page* 11
Lloid *and* Johannet, 27
Lloid *verſus* Painter, 81
Lloyd *v.* Beeſton, 295
Lloyd *and* Fotherby, 342
Long *v.* Lingood, 249
Longbotham *v.* Knap & al'. 404
Love *v.* Day, 311
Love & ux' *and* Buncombe, 406
Lovell *v.* Dyer, 254
Low *v.* Ravell, 64
Lowes *v.* Smith, 300
Luker *v.* Wallis, 370
Lumley *v.* Foſter, 344
Lunn *v.* Smith, 340
Luſhington *and* Doe, 78
Lutwidge *and* Baynes, 340
Lutwich *v.* Eames, 481
Lutwidge *v.* Wilcox, 482
L'Writ *v.* Tolcher, 79
Lyell *and* Byas & ux' & Goodfleſh, 407, 409
Lyte *v.* Rivers, 445
Lacey and Garrick *v.* Barry, 20
Lacy *v.* Lock, 349
Lacy *v.* Barry, 359
Lafortune *v.* Wilſon, 104
Lamb *v.* Goodenough, 358
Landon *v.* Pickering, 204
Lane *v.* Hall, 350
Langley *v.* Dryden, 22
Langley *v.* Bothwright, 232
Langley *v.* The Bailiffs and Burgeſſes of Eaſt-Redford, 415
Lannie *v.* Fieldhouſe, 352
Laſſiter *v.* Harvey, 466
Laſſiter *v.* Bull, 466
Long *v.* Baylies, 493
Launder *v.* Stoddard, 153
Launder *v.* Cokayne, 44
Law *v.* Saliſbury, 24
Lawes *v.* Satchwell, 88
Lawndy *v.* Clarke, 222
Lawrence *v.* Playford, 352
Laycock *v.* Garfooth, 45
Laycock *v.* Smith, 305
Layford *v.* Gardiner, 96
Lee *v.* Oldham, 275

Lee

Lee *verſus* Walker, &c. *Page* 309
Leeds, The Duke of, *v.* Vevers, 268
Leeke *v.* Leighton, Baronet, 393
Leekie *v.* Davies, 94
Leiceſter, The Mayor of, *v.* Green, 492
Leighton *v.* Leeke, 393
Lever *v.* The King, 34
Lewis *v.* Newton, 88
Lewis *v.* Aſkham, 489
Lilly *v.* Woodroth, 1
Linthwaite *v.* Bigbie, 398
Liſter *v.* Wainhouſe, 92
Litſon *v.* Cooke, 492
Littlehales *v.* Boſanqut, 162
Littleton *v.* Hanſon, 98
Littleton *v.* Greene, 420
Lloyd *v.* Cullum, 347
——— *v.* Winton, 148
——— *v.* Day, 149
Lock *v.* Lacy, 349
Lockwood *v.* Grey, 132
Lodge *v.* Smith, 356
Loggin *v.* Rawlins and Pullen, 21
Lomax *v.* The Biſhop of London, 139
Lombe *v.* Lombe, 217
London, The Biſhop of, *v.* Lomax, 139
——— *v.* Barker, 147
Long *v.* Wagſtaffe, 263
Longman *v.* Rogers, 263
Lord *v.* Biſcoe, 24
Love *v.* Jarrett, 457
Lovibond *v.* Faikney, 110
Low *v.* Beart, 210
Lowe *v.* Goodtitle, 130
Lowe *v.* Lowe, 130
Liſter *v.* Liſter, 218
Leech *v.* Newman, 365
Lookup *v.* Frederick, 365
Lowe *v.* Peacock, 316
Lucas *v.* Buckle, 264
Lucas *v.* Marſh, 453
Lunbroſa de Mattos *v.* Francia, 223
Lunn *v.* Aſcough, 43
Lutwidge *verſus* Norton, *Page* 105
Lytton *v.* Rolle, 351
Letgoe *v.* Holdfaſt, 192

M.

Mabſon *v.* Butler, 382
Mac Carty *v* Parminter, 229
Macdonald *v.* Gunter, 335
Mackerell *and* Bickley, 481
Mackenzie *and* Debalfe, 73
Mackintoſh *v.* Melo, 303
Macleed *v.* Marſden, 32
Makepeace *v.* Hopwood, 173
Makepeace *v.* Stevens & al'. 435
Maugir *v.* Hinds, 487
Manſbridge *and* Carter, 55
Manſell *and* Davies, 282
Markham *and* Wyat, 221
Marſh *and* Jacob, 297
Marſhal *v.* Lawrence, 333
Marſhall *and* Stratford, 440
Martin *and* Whalley, 62
Martin *v.* Price & al'. 62
Martin *and* Glaſscock, 243
Martin *aud* Crockay, 281
Martindale *v.* Galloway, 330
Martindale *v.* Shipman, 444
Martyn *v.* Skinner, 239
Maſon *v.* Littlehales, 11
Maſon *and* Walton, 29
Maſon *v.* Bruce, 66
Maſon *v.* Simmonds & al'. 202
Maſon *v.* Hodgſon, 250
Maſters *and* Palmby, 368
Mathews *v.* Holtam, 497
Mathews *v.* Lee, 444
Matthews & ux' *v.* Stone, 242
Matravers *v.* Adlam & Browne, 431
Maule *v.* Grubb, 200
Maurice *v.* Griffith, 32
Maxey *and* Allen & al'. 120
Medlycott *and* Dubois, 55
Mellor *v.* Hutchinſon, 169
Melo *and* Mackintoſh, 303
Meredith *and* Atwood, 300

Merrett

A Table of the Names of the CASES.

Merrett *verſus* Monfort, *Page* 64
Mendes *v.* Wolfe, 377
Micklethwaite *and* Harneis, 214
Midgley *and* Coates, 7
Milburn *and* Cowper, 126
Miller *v.* Vicaridge, 28
Mills *and* Cooper, 482
Milward *and* Bud, 442
Milward *and* Spooner, 481
Miſſaubin *and* Coſta, 312
Mitchell *and* Humfreys, 408
Molineux (Lord) *v.* Charles, 69
Molineux *and* Aſhton, 122
Molineux *and* Cain, 374
Monk *and* Savage, 433
Montfort *and* Merrett, 64
Moore *and* Goodright, 176
Moore *v.* Hodgſon, 239
Morgan *and* White, 198
Morſe *v.* Farnham, 242
Morſe *v.* Warran, 381
Munoz *and* Cortizos, 328
Munoz *v.* Levi, 381
Mackey *v.* Sutherland, 159
Machin *v.* Delaval, 52, 277
Maddock *v.* Fletcher, 384
Mallard *v.* Jenkins, 93
Mallon *v.* Gent, 416
Malton *v.* Acklam, 138
Maltom *v.* Acklom, 428
Manley *v.* French, 323
Mann *v.* Hay, 117
Manning *v.* Williams, 87
Manwaring *v.* Elton, 88
Manwaring *v.* Thomas, 88
Margerum *v.* Fenton, 318
Marks, by Brimmer her next Friend, 18
Marlow *v.* Weekes, 452
Marriott *v.* Fenn, 185
Marſh *v.* Lucas, 453
Mackaſley *v.* Aſhley, 424
Manwairing *v.* Williams, 401
Martin *v.* Ridge, 206
Martin *ex parte*, 223
Martin *v.* Ruſſel, 273
Martin *v.* Ballard, 349
Maſon *verſus* Obrien, Eſquire, Earl of Inchiquin, *Page*
Maſter, &c. of Univerſity Coll. *v.* Biſhop of Exeter, 25
Maſters *v.* Ruck, 12
Matchett *v.* Dalling, 57
Matthews *v.* Brewer, 350
Maurice *v.* Engier, 271
Mayo *v.* Weaver, 105
Martyn *v.* Davey, 289
Moſeley *v.* Sandford, 311
Manby *v.* The King, 325
Milner *v.* Wilſon, 364
Meen *v.* Fox, 363
Mathews *v.* Statham, 363
Mackinder *v.* Pendock, 467
Manning *v.* Gerring, 366
Moſs *v.* Hardy, 288
Mayor of the Borough of Leiceſter, *v.* Green alias Smith, 492
Mead *v.* Robinſon, 451
Mechell *v.* Vale, 284
Mee *v.* Orion, 188
Meen *v.* Tyrrill, 25
Meredith *v.* Barry, commonly called Lord Buttevant, 393
Merefield *v.* Hulls, 20, 359
Meriton *v.* Stevens, 205
Mich. 15 Geo. 2. 385
Mich. 28 Geo. 2. 363
Mich. 18 Geo. 2. 389
Milbourne *v.* Reade, 134
Miller *v.* Furtado, 213
Miller *v.* Parſons, 307
Michell *v.* Hodgſon, 26, 114
Mitchell *v.* Younghuſband, 135
Moffat *v.* Ogle, 133, 316
Molloy *v.* Petit, 223
Moody's Caſe, 42
Moore *v.* Prynne, 392
Moore *v.* Phillimore, 117
Moorhouſe *v.* Barham, 140
Mordaunt *v.* Barnard, 110
Morris *v.* Harriſon, 346
Morſe *v.* Hall, 267
Moſey *v.* Pitfield, 362
Mould *v.* Jackman, 52

Moyſe

A TABLE of the Names of the CASES.

Moyſe *verſus* Cockſedge, *Page* 459
Murray *v.* Bowen, 21
Mordicai *v.* Nutting, 145
Morley *v.* Carr, 112
Morley *v.* Delany, 112

N.

Nalder *and* Haward, 60
Napper *v.* Biddle, 334
Neale *and* Smalley, 173
Neeler *and* Arne, 30
Neeves *and* Stibbs, 336
Negative *v.* Poſitive, 172
Nevil *v.* Fiſher, 338
Newarke *v.* Newarke, 431
Newball *v.* James, 434
Newberry *v.* Strudwick, 161, 335
Newby *v.* Burton, 483
Newman *v.* Butterworth, 66
Newnham *and* Le Mark, 299
Newſom, Criſp & Smith *and* Corrance, 428
Nichols *v.* Dallyhunty, 79
Nichols *and* Downes, 497
Nichols *and* Alſop, 293
Nichols *and* Weſt, 340
Nichols *and* King, 343
Nicholls *and* Taylor, 409
Nichols & al' *v.* Wilder, 432
Nichols *and* Flanders, 433
Nicholſon *v.* Conſtable, 333
Nightingale *and* Burges, 230
Nivin *and* Sibſon, 224
Noble *v.* Lancaſter, 125, 439
Norden *and* Warden, 487
Noright *and* Goodright, 178
North *v.* Chambers, 319
Norton *and* Hale, 169
Naſh *v.* Harrow, 310
Needham *v.* Whetham, 46
Neſbitt *v.* Farmer, 168
Newton *v.* Lewis, 88
Noke *v.* Ingham and Chiſhull, 11
Nonelly *v.* Eaſt, 147
Norman *v.* Beaumont, 453
Norman *v.* Beard, 113
Northern *verſus* Oliver, *Page* 266
Norton *v.* Lutwidge, 105
Notitle *v.* Goodtitle, 270
Nunn *v.* Fitch, qui tam, 464, 466
Nutkins *v.* Wilkin, 96
Nutting *v.* Mordecai, 145
Norden *v.* Horſley, 159
Noright *v.* Bowman, 194
Nunn *v.* Barber, 218
Newman *v.* Leech, 365
Neale *v.* Simpſon, 365

O.

Oates *v.* Forreſt, 196
Oatridge *and* Jenner, 293
O'Brien *and* Deferiſay, 375
O'Carroll *and* Baldwin, 380
Odeham *and* Talbot, 411
Oliver *and* Harriſon, 56
Olorenſhaw *v.* Stanyforth, 201
Ormond *v.* Griffith, 63
Oſborne *v.* Haddock, 257
Oſborne *v.* Carter, 319
Ottiwell *v.* D'Aeth, 254
Otto *and* Chriſtophory, 302
Owen *and* Bowler, 432
Oſbaldeſton *v.* Eagles, 318
Obeden *v.* Wtight, 417
Obrien, Eſquire, Earl of Inchiquin, *v.* Maſon, 418
O'Connor *v.* Reiley, 325
O'Bryen, Lady Mary, *v.* The Earl of Jerſey, 168
O'Bryan *v.* Owſton, 145
Ogier, qui tam, *v.* Hayward, 417
Ogle *v.* Moffat, 133, 316
Okes *v.* Stiles, 182
Oliver *v.* Northern, 266
Orion *v.* Mee, 188
Otway *v.* Cokayne, 85
Overton *v.* Stone, 14
Overton *v.* Baxter, 102
Ouldham *v.* Lee, 275
Owſton *v.* O'Bryan, 145
Oxley *v.* Taylor, 498

A TABLE of the Names of the CASES.

P.

Page *and* Hanſley, *Page* 75
Painter *and* Lloid, 81
Palmby *verſus* Maſters, 368
Palmer *and* Barker, 382
Painter *v.* Coppin, 241
Panchand *v.* Woolley, 302
Paradice *v.* Holiday, 77
Parker *and* Wheatly, 367
Parminter *and* Mac Carty, 229
Parr *v.* Soams, 29
Parr *v.* Seames & al'. 438
Parrat *v.* Benn, 195
Parrot *v.* Smith, 74
Parry *and* Darch, 82
Paterſon *and* Balderidge, 172
Patrick *v.* Pettis, 200
Pattinſon *and* Richards, 235
Paul *v.* Southouſe, 247
Paul *v.* Gledhill, 294
Paul *v.* Young, 481
Pauper's *Caſe*, 328
Paxton *and* Beech, 367
Payne *and* Blackſtock, 487
Peaceable *v.* Troubleſome, 172
Peach *v.* Wadland, 319
Peachy *v.* Bowes, 368
Peaſe *v.* Badtitle, 336
Peirſon *v.* Ives, 332
Pellett *and* Hughes, 330
Penrice *v.* Jackſon, 485
Petcher *and* Baker, 440
Peter *v.* Reignier, 410
Pettis *and* Patrick, 200
Philips *and* Robinſon, 296
Philips & al' *and* The King, 429
Philips *v.* Scullard, 435
Philips *v.* Fowler, 441
Phyſick *and* Clarkſon, 203
Pigot *v.* Charlewood, 200
Pike *and* The King, 403
Pincent *and* Butler, 41
Pinhero *and* Calveraq & ux'. 84
Pinhero *and* Calveraq, 343
Pinock *v.* Willet, 228
Pitcairne *and* Creeke & al'. 127, 129
Pitt *and* Dutton, *Page* 199
Pitt *verſus* Evans, 428
Pitt *and* Letgoe, 439
Pitts *and* Welland, 4
Plumb *v.* Savage & ux'. 180
Plumlee *and* Rivers & al'. 240
Poictier *and* Fleetwood, 67
Pollamounter *and* Burgeſs, 281
Pollington & ux' & al' *and* Forſter, 216
Pool *and* Townſhend, 228
Poole *v.* Broadfield, 330, 431
Porter *and* Croſſe, 339
Porter *v.* Kent, 405
Porter *and* Belſhaw, 478
Poſitive *and* Negative, 172
Potts *v.* Creſwell, 343
Poulter *v.* Greenwood, 367
Poulter *v.* Salmon, 383
Powell *and* Hewitt, 221
Powell *and* Roundell, 256
Price *and* Cave, 30
Price & al' *v.* Martin, 62
Price *v.* Bambridge, 297
Prichard *and* Lazarus, 125
Pritchard *and* Lewis, 304
Probart *and* Reeves, 330
Procter *and* Tidmas, 373
Prudhoe *v.* Armſtrong, 256
Pryor *v.* Earl of Iſlay, 229
Puckmore *and* Hunt, 155
Pym *v.* Warren, 169
Palmer *v.* Coſins, 26
Palmer *v.* Williams, 130
Palmer *v.* Bond, 447
Parker *v.* Harvey, 395
Parker *v.* Hobſon, 237
Paris *v.* Stroud, 95
Parſons *v.* White, 391
Pattinſon *v.* Craghill, 24
Peacocke *v.* Lowe, 316
Pearſon *v.* Roberts, 156
Peck *v.* Adams, 396
Peirce *v.* Saunders, 283
Peirce *v.* Britton, 462
Pelham *v.* Wright, 150
Penrice *v.* Penrice, 234
Pennington *v.* Welch, 395

A TABLE of the Names of the CASES.

Penvold *verſus* Thomlinſon, *Page* 356
Pepiatt, one, &c. *v.* Bell, 316
Percival *v.* Thurſtout, 183
Peronet *v.* Smith, 397
Petit *v.* Molloy, 223
Phillips *v.* Smith, 354
Pinchbeck *v.* Bradley, 115
Parker *v.* Aſlyne, 472
Phillips *v.* Barker. 289
Parrott *v.* Elliott, 425
Peterborough, Earl of *v.* Duggin, 425
Parry *v.* Davies, 493
Pickering *v.* Fitzpatrick, 470
Pendock *v.* Mackinder, 467
Pearſon *v.* Roberts, 156
Philmore *v.* Sir William Stanhope, 421, 422
Phillimore *v.* Moore, 117
Pickering *v.* Landon, 204
Pickering *v.* Thomſon, 207
Pindar *v.* Steele, 347
Pitcairne *v.* Clerk, in Prohibition, 129
Pitt *v.* Wortley, 420, 421
Playford *v.* Lawrence, 351
Poole *v.* Boulton, 139
Pool *v.* Cook, 389
Potter *v.* Harriſon, 23
Potter *v.* Colſworthy, 422
Powell *v.* Seaber, 91
Powell *v.* Rolles, 166
Pratt *v.* Tribe, 91
———, on the Demiſe of Preſton, *v.* ———, in Ejectment, 188
Preſton *v.* Prinnell, 351
Price *v.* Street, 102
Price *v.* Diggs, 313
Price *v.* Everett, 397
Priddle *v.* Skurray, 15
Prince *v.* Davis, 429
Prinnell *v.* Preſton, 351
Proctor *v.* Bury, 450
Proſſer *v.* Wilcox, 95
Prows *v.* Child, 390
Prynne *v.* Moore, 392
Purſer *v.* Hopkins, 33
Price *v.* Schomberg, 425

Q.

Quennel *and* Cramborne, *Page* 201
Quare impedit, 139

R.

Racket *and* Ware, 30
Raine *verſus* Spencer, 334
Rand *and* Thomeur, 486
Randall *and* Smith, 247
Ravell *and* Low, 64
Rawling *v.* Wood, 54
Ray *v.* Jackſon, 121
Read & al' *and* Box, 482
Reed *and* Royſton, 411
Reeks & ux' *v.* Robins, 337
Reeves *and* Gregory, 303
Reeves *v.* Probart, 330
Reignier *and* Peter, 410
Rex *v.* Baldwin & al'. 430
Rex *v.* Biſhop of Carliſle & al. 2, 9
Rex *v.* Firebrace, 258
Rex *v.* Harries, 31
Rex *v.* Hartop, 10
Rex *v.* Philips & al'. 429
Rex *v*, Pike, 403
Rex *v.* Tyrell & al'. 430
Rex *v.* Willis, 258
Reynolds *v.* Simonds, 446
Reynoldſon *and* Corderoy, 155
Reynoldſon *and* Cowling, 477
Rhodes *and* Scrape, 8
Rhodes *and* Willoughby, 70
Rice *v.* Vinall, 483
Richard *v.* Davis, 203
Richards *v.* Pattinſon, 235
Richardſon *and* Smith, 195
Richmond's *Caſe*, 37
Right *v.* Wrong, 173
Rivers & al' *v.* Plumlee, 240
Rivers *and* Lyte, 445
Roberts & al' *and* Hanſlow & ux'. 27
Roberts *and* Harris, 73
Roberts *and* Shindler, 126
Roberts *v.* Hammond, 374
Roberts *v.* Downes, 437
Roberts *v.* Lord Hillſborough, 438
Robins *and* Reeks, 337
Robins *v.* Wigley, 369
Robinſon *and* Dovor, 128
Robinſon *v.* Tuckwell, 203

A TABLE of the Names of the CASES.

Robinſon *verſus* Sparrow, *Page* 244
Robinſon *v.* Philips, 296
Robinſon *and* Jarrat, 333
Robinſon *and* Hemings, 436
Rock *and* Welland, 243
Roe *v.* Doe, 39, 172, 176, 181, 177, 178, 179
Roe *and* Smith, 331
Rolt *v.* Way, 253
Rondeau *and* Boſanquet, 245
Roundell *v.* Powell, 256
Royſton *v.* Reed, 411
Rudd *v.* Coe, 55
Ruſh *v.* Dale, 404
Ruſſel *v.* Gately, 76
Ruſſel *and* Chance, 404
Rye *v.* Croſſman, 475
Radburn *v.* Howard, 130
Randal *v.* Tarrant, 22
Randle *v.* Wair, 271
Reiley *v.* O'Connor, 325
Richards *v.* Welch, 468
Rex *v* Manby, 325
Raſh *v.* Thompſon, 44
Rawlins *v.* Loggin, 21
Rawlinſon *v.* Stone, 164, 195
Ray *v.* Huſſey, 104
Ray *v.* Dearſley, 361
Read *v.* Garnett, 58
Read *v.* Sparrow, 235
Reade *v.* Milbourne, 134
Redford, the Bailiffs and Burgeſſes of, *v.* Langley, 415
Reed *v.* Blanchett, 308
Remy *v.* Knight, 101
Reyner *v.* Brough, 89
Reynoldſon *v.* Blades, 108
Richardſon *v.* Greenwood, 16
Richardſon *v.* Walker, 488
Richardſon *v.* Bailey, 35
Richwood *v.* Cockſedge, 45
Rickaby *v.* Wilſon, 490
Ridge *v.* Martin, 206
Ridley *v.* Wilſon, 420
Ridley *v.* Jeremain, 490
Ring *v.* Bold, 20
Riſhton *v.* Turton, 274
Rix *v.* Hawys, 461
Roberts *v.* Biggs, 146
Roberts *verſus* Pearſon, *Page* 156
Roberts *v.* Hughes, 359
Roberts *v.* Boſwell, 422
Robinſon *v.* Dale, 322
Robinſon *v.* Scoffin, 145
Robinſon *v.* Mead, 451
Robinſon *v.* Unwyn, 53
Roe *v.* Pearſon, 103
Roe *v.* Doe, on the Demiſe of Stephenſon, 186
Roe *v.* Doe, on the Demiſe of Hyde, 186
Roe *v.* Doe, on the Demiſe of Stone, 189
Roe on Demiſe of Fearnley *v.* Doe, 190
Roe *v.* Aylmer, 236
Roe, on the Demiſe of Hutching, *v.* Dunning, 308
Rogers *v.* Sandford, 161
Roe, on Demiſe of Wright, *v.* Doe, 190
Roe, on Demiſe of Agar, *v.* Doe, 192
Roe, on Demiſe of Leake, *v.* Doe, 193
Roe *v.* Doe, on Demiſe of Dailey, 194
Roe *v.* Whitehead, 499
Roecoffse *v.* Springett, 115
Rogers *v.* Longman, 263
Rogers *v.* Bulling, 278
Rolle *v.* Lytton, 351
Roquett *v.* Roquett, 399
Roſs *v.* Yeoman, 285
Roſs *v.* Auſtin, 287
Rowles *v.* Powell, 166
Rowſon *v.* Williamſon, 207
Royden *v.* Batty, 284
Ruck *v.* Maſters, 12
Rutter *v.* The Biſhop of Hereford, 2, 350
Ruſſell *v.* Martin, 273
Ruſſell *v.* Ball, 455
Ryall *v.* Chapman, 415
Rogers *v.* Stanford, 288

S.

Salmon *and* Poulter, 383
Sampſon *v* Warren, 75
Sampſon *and* Bennet, 407
Sandell *and* Hardriſs, 478

A TABLE of the Names of the CASES.

Sankey *and* Cook & al'. *Page* 65
Shapland & ux' *and* Collins, 412
Satterthwaite & ux' *verſus* Watford, 280
Savage & ux' *and* Plumb, 180
Savage *v.* Francklyn, 280
Savage *v.* Monk, 433
Saunders *and* Grey, 248
Sayer *and* Cooper, 29
Scott *v.* Ferrall, 240
Scrape *v.* Rhodes, 8
Scrape *v.* Hunt, 175
Scullard *and* Philips, 435
Seames & al' *and* Part, 438
Sedgley *v.* Weſtbrooke, 246
Sellon *v.* Chamberlayne, 444
Seneff *and* Eggleton, 475
Shapland & ux' *and* Collins, 412
Sharpe *v.* Stacye, 5
Shaw *v* Hawkins, 72
Shaw *and* Whitehead, 252
Shaw *v.* Gimbert, 369
Shawe *and* Herbert, 478
Sheers *v.* Bartlett, 484
Shelley *v.* Wright, 338
Sheridan *v.* Aſhby, 403
Sherlock *v.* Templer, 337
Sherman *and* Taylor, 299
Sherwin *v.* Bowes, 499
Shindler *v.* Roberts, 126
Shipman *and* Browne, 5
Shipman *and* Martindale, 444
Shipway *v.* Clarke, 32
Shorter *v.* Helbutt, 476
Sibley *v.* Sibley, 378
Sibſon *v.* Nivin, 224
Sibthorpe *v.* Adams, 40
Simmonds & al' *v.* Maſon, 202
Simonds *and* Reynolds, 446
Simmons *and* Thompſon, 475
Simpſon *v.* Aſhburne, 79
Simpſon *v.* Daffield, 254
Singleton *v.* Lacey, 478
Skinner *and* Martin, 239
Slater *and* Jeffs, 123
Slaughter *v.* Talbot, 128
Slocomb *and* Taylor, 243
Smales *and* Foſter, 295
Smalley *v.* Neale, 173
Smart *and* Eyles, *Page* 123
Smith *and* Parrott, 74
Smith *verſus* Richardſon, 195
Smith *v.* Huggins, 236
Smith *and* Fray, 240, 487
Smith *v.* Randall, 247
Smith *and* Lane, 252
Smith *and* Lowes, 300
Smith *v.* Hoff, 301
Smith *v.* Roe, 331
Smith *v.* Lunn, 340
Smith *v.* Wintle, 405
Smith *and* Amery, 412
Smith *and* Johns, 477
Smith *v.* Haward, 480
Smith *and* Bryan, 486
Snape & al' *v.* Hancock, 198
Soames *and* Parr, 29
South *and* Winter, 486
Southam *v.* Jennings, 6
Southeby *v.* Day & al'. 154
Southouſe *and* Paul, 247
Sparrow *and* Robinſon, 244
Spencer *and* Raine, 334
Spinks *v.* Bird, 72, 338, 434
Spooner *v.* Milward, 481
Spurrell *and* Webb, 259, 261
Squire *v.* Almond, 297
Stafford *v.* Little, 257
Standing *and* Burnand, 332
Standiſh *and* Cutliffe, 405
Satnton *and* Walton, 37
Stanyforth *and* Olorenſhaw, 201
Stapleton *and* Langley, 40
Stapp *and* Clayton, 379
Stacye *and* Sharpe, 5
Stephenſon *v.* Browning, 56
Stephenſon *and* Jeynes, 124
Stevens & al' *and* Makepeace, 435
Steward *v.* Biſhop, 60
Stibbs *v.* Neeves, 336
Still *v.* Still, 40
St. John (Lord) *v.* Abbot, 441
Stone *and* Clarke, 36
Stone *and* Mathews & ux'. 242
Stoneham *v.* Dent, 487
Straphon *v.* Thompſon, 281
Stratford *v.* Marſhall, 440

Strickland (Sir William) *verſus* Hodgſon, *Page* 372
Strickland *v.* Fawcett, 443
Strudwick *v.* Newberry, 161, 335
Sunderland *and* Coppendale, 42
Sutton *and* Langdell, 32
Sutton *and* Aſhley, 380
Swaile *v.* Leaver, 299
Swain *v.* Girdler, 371
Swan *v.* Freeman, 282
Swann *and* Jenner, 372
Sweetland *v.* Beezley & Browne, 4
Sydebotham *v.* Frith, 336
Sydenham & Skinner *and* Bennet, 320
Sympſon *v.* Gray, 197
Saliſbury *v.* Law, 24
Salmon *v.* Aldrich, 349
Samſon *v.* Day, 448
Sander *v.* Spincks, 105
Sanders *v.* Pierce, 283
Sandys *v.* Spivey, 388
Sandys *v.* Jones, 463
Sanſum *v.* Evereſt, 491
Satchwell *v.* Burdus, 208
Satchwell *v.* Barber, 326
Saville *v.* Wiltſhire, 165, 270
Scarrall *v.* Horton, 283
Scoffin *v.* Robinſon, 145
Scott *v.* Gladman, 53
Scott *v.* Bentley, 317
Scrutton on the Demiſe of, *v.* Driver, 17
Seaber *v.* Powell, 91
Searle *v.* Goodright, 147
Selman *v.* Courtney, 446
Semple *v.* Bailey, 307
Sewords *v.* Crutchfield, 116
Shaft *v.* Downes, 129
Schomberg *v.* Price, 425
Sawyer *v.* Vaughan, 35
Say *v.* Smith, 217
Shuter *v.* Horſley, 53
Seed *v.* Wolfenden, 148
Sandford *v.* Rogers, 161
Stretch *v.* Wheeler, 497
Sandford *v.* Moſley, 311
Sharpe *v.* Sharpe, 163
Sharpe *v.* Wilcox, 273
Shepard *verſus* Randal, *Page* 22
Shepard *v.* Clarke, 488
Sherrard *v.* Harper, 136
Shields *v.* Cuthbertſon, 162
Simpſon *v.* Bell, 500
Shobrook *v.* Julian, 108
Shone *v.* Cook, 12, 488
Short *v.* King, 188
Shorter *v.* Burdus, 222
Skipwith *v.* Croſs, 449
Skurry *v.* Priddle, 15
Skyllins *v.* Davis, 232
Slater *v.* Trim, 46
Smales *v.* Waite, 135
Smith *v.* Filewood, 110
Smith *v.* Smithſon, 94
Smith *v.* Gregg, 464
Smith *v.* Phripp, 209
Smith *v.* Tidmarſh, 285
Smith *v.* Laycock, 305
Smith *v.* Blackmore, 307
Smith *v.* Farnworth, 322
Smith *v.* Lodge, 356
Smith *v.* Peronet, 397
Smith *v.* Hankey, 449
Smithſon *v.* Smith, 94
Smithſon *v.* Johnſon, 113
Southby *v.* Eaton, 206
Somers *v.* Horſley 116
Sparrow *v.* Reade, 235
Spearman *v.* Evening, 99
Speed *v.* Barber, 321
Speight *v.* Harriſon, 356
Spencer *v.* Thomlinſon, 167
Spinckes *v.* Sanders, 105
Spivey *v.* Sandys, 388
Spooner *v.* Barlett, 461
Springett *v.* Roeloffse, 115
Staple *v.* Bird, 214
Smith *v.* Say, 217
Statham *v.* Mathews, 363
Smith *v.* Beaſley, 402
Spurrell *v.* Webb, 261
Stafford *v.* Thompſon, 305
Stafford, the Hundred of, *v.* Kemp, 455
Stanhope, Sir William, *v.* Philmore, 421, 422
Stannard *v.* Fleet, 392

Stanynought, one, &c. *verſus* ——, and ſeven others, *Page* 210
Sherbrooke *v.* Cooper, 426
Stanynought *v.* Coſins, 456
Stapleton *v.* Baron de Stark, 109
Steele *v.* Pindar, 347
Stephenſon *v.* Brookes, 33
Stevens *v.* Garway, 19
Stevens *v.* Meriton, 205
Stevens *v.* Dobſon, 461
Stewart *v.* Hammond, 33
Stiles *v.* Oakes, 182
Stockwell *v.* Aſhley, 324
Stone *v.* Overton, 14
Stone *v.* Rawlinſon, 164, 195
Street *v.* Price, 102
Stroud *v.* Paris, 95
Stuart *v.* Beaumand, 18
Studwell *v.* Bunton, 95
Sugar, qui tam, *v.* Webſter, 315
Sunning, the Hundred of, *v.* Chandler, 458
Sutton *v.* Waddilove, 314
Swan *v.* Calcraft, 204
Swan *v.* Fuller, 283
Swarbeck *v.* Wheeler, 100
Sweetapple *v.* Atterbury, 211
Swinley *v.* Woodhouſe, 226, 271
Sykes *v.* Dawſon, 209
Stoddards *v.* Launder, 153
Sutherland *v.* Mackey, 159
Stanford *v.* Rogers, 288
Swayne *v.* Wright, 289
Stibbard *v.* Glover, 364
Simpſon *v.* Neale, 365
Spooner *v.* Hall, 366

T.

Talbot *and* Slaughter, 128
Talbot *v.* Odeham, 411
Taſker *v.* Geale, 429
Taylor *v.* Bramble, 6
Taylor *and* Clarke, 124
Taylor *v.* Slocombe, 243
Taylor *v.* Lawſon, 251
Taylor *v.* Sherman, 299
Taylor *and* Nicholls, 409
Teale *v.* Cheſhire, 82
Teaſdaile *and* Bunting, 231
Templer *and* Sherlock, 337
Theedham *verſus* Jackſon, *Page* 238
Thomeur Rand, 486
Thornhill *and* Dakeyne, 198
Thornton *and* Hayes, 122, 201
Thredder *v.* Travis, 175
Threlkeld *v.* Goodfellow, 224
Thruſtout *and* Farmer, 180
Tidmarſh *and* Dean, 216
Tidmas *v.* Procter, 373
Tillam *and* Evans, 257
Tolcher *and* L'Writ, 79
Tomlinſon *v.* White & Pomeroy, 121
Tomlinſon *and* Elmes, 230
Tompſon *and* Arnold, 119
Tompſon *and* Straphon, 281
Tompſon *v.* Simmons, 475
Toms *v.* Hammond, 370
Townſend *and* Champion, 80
Townſend *v.* Pool, 228
Townſend *v.* Baker, 31
Travis *and* Thredder, 175
Tregurtha & al' *and* Goodright, 121
Troubleſome *and* Peaceable, 172
Troward *and* Atterbury, 250
Tuckwell *and* Langton, 156
Tuckwell *and* Robinſon, 203
Tupper *v.* Doe, 181
Turnbull & al' *and* Coulſon, 246
Turner *v.* Williams, 259
Turner *v.* Bean, 345
Twiſt *and* Boyes, 292
Tyrrel & al' *and* The King, 430
Taylor *v.* Oxley, 498
Talton *v.* Waldron, 34
Tayler *v.* Wittall, 355
Taylor *v.* Atkins, 285
Teaſdale *v.* Britten, 48
Terrill *v.* Milton, 315
Thomas *v.* Manwaring, 88
Thomas *v.* Apperley, 17
Thomas *v.* Doe, 185
Thomlinſon *v.* Gorton, 310
Thomlinſon *v.* Penvold, 356
Thomlinſon *v.* Spencer, 167
Thompkins *v.* Woodley, 387
Thomſon *v.* Pickering, 207
Thompſon *v.* Raſh, 44
Thompſon *v.* Briſtow, 205

Thompſon *verſus* Stafford, *Page* 305
Thompſon *v.* Atkinſon, 25
Thornley *v.* Hughes, 354
Thruſtout *v.* Woodyear, 131
Thruſtout *v.* Goodtitle, 183, 187
Thruſtout *v.* Percival, 183
——— *v.* Wilſon, 149
Thorn *v.* Wrey, 454
Thornhill *v.* Tunnard, 348
Tidmarſh *v.* Smith, 285
Tiffin *v.* Glaſs, 142
Todd *v.* Todd, 48
Towne *v.* Walker, 309
Tracey *v.* Preſton, 98
Trappett *v.* Briſtow, 352
Treherne *v.* Greſſingham, 87
Treherne *v.* Wells, 346
Treeweeke *v.* Wright, 432
Tribe *v.* Pratt, 91
Trill *v.* Follett, 96
Tickall *v.* Brodie, 35
Thruſtout *v.* Goodſtiler, on Demiſe of Cooper, 193
Tudge *v.* Baldwin, 237
Thomas *v.* Eamonſon, 365
Todd *v.* Todd, B. R. 48
Thomlinſon *v.* Croſer, 472
Trim *v.* Slater, 46
Trinity 17 & 18 Geo. 2. 164
Trinity 18 & 19 Geo. 2. 194
Trinity 31 Geo. 2. 150
Tunnard *v.* Thornhill, 348
Tunſtall *v.* Duckworth, 184
Tupipney de Mailey *v.* Gibbs, 398
Turner *v.* Cowper, 210
Turner *v.* Pigg, 226
Turner *v.* Bullythorpe, 353
Turner *v.* Horton, 132
Turton *v.* Riſhton, 274
Tutton *v.* Andrews, 448
Tynte *v.* Every, 58
Tyrrell *v.* Meen, 25

U.

Vanfleet *v.* Croſs, 170
Vanthiennen *and* Faget, 59
Varley *and* Hartley, 329
Venner *and* Clarke, 377
Vicaridge *and* Miller, 28
Vinall *and* Rice, 383
Vivian *and* Deacon, *Page* 7
Voyer *and* Jemmet, 296
Uppington *and* Carter, 437
Upton *and* Green, 410
Uſher & al' *verſus* Edmunds, 344
Valentine *v.* Hawkins, 419
Vane *v.* Mechell, 284
Vavaſor *v.* Gott, 164
Vevers *v.* The Duke of Leeds, 268
Vice *v.* Goodright, 182
Vile *v.* Daw, 314
Vilmott *v.* Barry, 44
Unwin *v.* Deane, 275
Unwyn *v.* Robinſon, 53
Uſborne *v.* Bludwick, 19
Vaughan *v.* Sawyer, 35

W.

Waddington *v.* Fitch, 64
Wadland *and* Peach, 319
Wagſtaffe *v.* Darby, 366
Waldo *v.* Harriſon, 5
Walker *and* Wickham, 125
Wall *and* Davenport, 62
Wallace *v.* Willington, 256
Wallis *and* Luker, 370
Walton *v.* Maſon, 29
Walton *v.* Stanton, 37
Ward *and* Barnes, 42
Ward *and* Atterbury, 60
Ward *v.* Alderton, 84
Ward *and* Humfreys, 331
Ward *v.* Coclough, 480
Warden *v.* Norden, 487
Ware *v.* Racket, 30
Warren *and* Sampſon, 75
Warren *and* Pym, 169
Warren *v.* Lapdon, 249
Warren *and* Buck, 339
Warren *and* Morſe, 380
Warrington *v.* Elliot, 371
Warwick *v.* Figg, 196
Waſhington *and* White, 411
Waſs *v.* Cornet & Malpas, 76
Watford *v.* Satterthwaite & ux'. 280
Wathews *and* Girdler, 484
Watkins *and* Green, 294
Watkins *and* Laggett, 412
Watſon *v.* Willis, 485
Way *and* Rolt, 253

A TABLE of the Names of the CASES.

Webb *verſus* Spurrell, *Page* 259, 261
Webſter *v.* Holme, 31
Wedgwood *and* Halſal, 174
Welland *v.* Pitts, 4
Welland *v.* Rock, 243
Welland *v.* Furment, 339
Wentworth *v.* Huſtler, 260
Weſt *v.* Nichols, 340
Weſtall *v.* Finch, 406
Weſtbrooke *and* Sedgeley, 246
Weſtbury *and* Hollis, 301
Weyman *v.* Weyman, 71
Whalley *v.* Martin, 62
Wharton (Duke of) *and* Darlow, 258
Wheatley *v.* Parker, 367
Whitaker *and* Caſtle & ux'. 371
Whitaker *and* Byers, 406
Whitcher *and* Leaver, 253
White & Pomeroy *and* Tomlinſon, 121
White *and* Morgan, 198
White *v.* Daman, 282
White *v.* Waſhington, 411
Whitehead *v.* Shaw, 252
Whitehead *v.* Whitfield, 252
Whittingham *v.* Coghlan, 80
Wickham *v.* Walker, 125
Wigley *and* Robins, 369
Wilby *and* Hall, 404
Wilcox *and* Lutwidge, 482
Wilder *and* Nichols & al'. 432
Wilkins *and* Anger, 478
Wilkinſon *and* Jones, 249
Willet *and* Pinock, 228
Williams *v.* Jones, 6, 295
Williams *and* Turner, 259
Williams *and* Faulkner, 409
Williams *and* Cruſe, 260
Williamſon *and* Jenner, 294
Willington *and* Wallace, 256
Willoughby *v.* Rhodes, 70
Willis *and* The King, 258
Willis *v.* Bennett, 443
Willis *and* Watſon, 485
Wilſon *and* Handaſyd, 334
Wingfield *v.* Goodridge, 62
Winter *and* Knight, 68
Winter *v.* South, 486
Wintle *and* Smith, 405
Wiſbich (Burgeſſes of) *verſus* Frier, *Page* 332
Wiſe *v.* Lawrance & al'. 59
Wolfe *and* Mendes, 377
Wood *and* Rawling, 54
Wood *and* Young, 69
Wood *v.* Grace, 344
Wood *v.* Winch, 480
Woodhouſe & al' *and* Jury, 333
Woodhouſe *and* Harper, 341
Woodman *v.* Inwen, 9
Woods *v.* Armſtrong, 78
Woodyer *and* Ling, 69
Woolley *and* Panchand, 302
Woolmer *and* Hammond, 28, 120
Worthington *and* Adkin, 331
Wreathock *v.* Bingham, 476
Wright *and* Shelley, 338
Wright *v.* Kirſwill, 376
Wrong *and* Right, 173
Wrong *and* Goodright, 175
Wyat *v.* Markham, 221
Wye *v.* Wright, 403
Waddilove *v.* Sutton, 314
Wade *v.* Wadman, 167
Wadman *v.* Wade, 167
Wadmore *v.* Hill, 387
Wagſtaff *v.* Long, 263
Wainhouſe *v.* Liſter, 92
Wait *v.* Garth, 261
Waite *v.* Smales, 135
Waldron *v.* Talton, 34
Walker *v.* Towne, 309
Walker *v.* Haryes, 413
Walker *v.* Richardſon, 488
Wall *v.* Ellis, 234
Wallace *v.* Humes, 231
Walnouth *v.* Houghton, 284
Ware *v.* The Weavers Company, 327
Warwick *v.* Jackſon, 361
Watſon *v.* Tilney, 304
Watt *v.* Alanſon, 394
Weat *v.* Parker, 323
Weaver *v.* Mayo, 105
Weavers Company *v.* Ware, 327
Webb *v.* Spurrell, 261
Webſter *v.* Barrowclough, 143
Webſter *v.* Sugar, qui tam, 315
Weddall *v.* Witton, 23

Welch

Welch *verſus* Pennington, *Page* 395
Wells *v.* Treherne, 346
Wells *v.* Hayward, 489
Weſt *v.* Hedges, 211
Whadcock *v.* Froſt, 447
Whadcock *v.* Fowler, 262
Whaley *v.* Harriſon, 360
Wheeler *v.* Marlow, 452
Wheeler *v.* Swarbrook, 100
Whetham *v.* Needham, 46
White *v.* Hawkes, 394
White *v.* Whithall, 323
White *v.* Dunſter, 321
White *v.* Parſons, 391
Whitehall *v.* Carr, 465
Whitehead *v.* Gale, 106, 277
Whitehead *v.* Roe, 499
Wheeler *v.* Stretch, 497
Wilſon *v.* Milner, 364
Webb *v.* Dorwell, 400
Welch *v.* Richards, 468
Whitelock *v.* Hart, 452
Whitfield *v.* Whitfield, 109
Whitham *v.* Hill, 151
Wignall *v.* Bouch, 171
Wilcock *v.* Bownas, 360
Wilcox *v.* Proſſer, 95
Wilcox *v.* Sharpe, 273
Wilkes *v.* Broadbent, 266
Wilkin *v.* Nutkins, 96
Wilkinſon *v.* Guy, 314
Wilkinſon *v.* Carleton, 86
Wilks *v.* Broadbent, 15, 133
Williams *v.* Hill, 357
Williams *v.* Palmer, 130
Williams *v.* Manning, 87
Williamſon *v.* Rownſon, 207
Willoughby *v.* Vincent, 43
Willoughby *v.* Cracraft, 227
Wilſon *v.* Ridley, 420
Wilſon *v.* Rickabey, 490
Wilſon *v.* Finch, 163
Wilſon *v.* Davids, 18
Wilſon *v.* Lafortune, 104
Wilſon *v.* Barber, 312
Wilſon *v.* Thruſtout, 149
Wiltſhire *verſus* Saville, *Page* 165
270
Wingfield *v.* Beard, 419
Winkworth *v.* Wyat, 33
Wenton *v.* Lloyd, 148
Withall *v.* White, 261
Wittall *v.* Taylor, 355
Witton *v.* Eaſt, 23
Witton *v.* Weddall, 23
Woeden *v.* Sanders, 460
Wolfenden *v.* Seed, 148
Wood *v.* Dodſon, 278
Woodcock *v.* Kettleby, 86
Woodhouſe *v.* Swinley, 226, 271
Woodley *v.* Tompkins, 387
Woodman *v.* Dapp, 313
Watts *v.* Birkett, 220
Whitby *v.* Chapman, 364
Williams *v.* Mainwairing, 401
Woolſey *v.* Armſtrong, 467
Wiatt *v.* Packer, 323
Wright *v.* Swayne, 289
Woodyear *v.* Thruſtout, 131
Wortley *v.* Pitt, 420, 421
Wrey *v.* Thorn, 454
Wright *v.* Treeweeke, 432
Wright *v.* Goſtelow, 86
Wright *v.* Bennington, 286
Wyatt *v.* Winkworth, 33
Wynne *v.* Thomas, 17
Woodnott *v.* Lilly, 111
Wright *v.* Pelham, 150

Y.

Young *v.* Wood, 69
Young *and* Paul, 481
Younges *and* Cooper, 3
Yates *v.* Gunn, 141
Yate *v.* Swaine, 233
Yeoman *v.* Roſs, 285
Younghuſband *v.* Mitchell, 135
York, the Archbiſhop of, *v.* The King, 353
Yapp's *Caſe*, 402
Young *v.* Hicks, 458

Z.

Zouch *v.* Bell, 118

Actions Real.

Eaſterby *againſt* Eaſterby. Mich. 7 G. 2.

In Dower. AN Iſſue was joined between the ſaid Parties upon *Ne unques accouple en loyal Matrimonie*, and a Writ awarded to the Biſhop; he returned the Evidence before him to prove the Marriage, which appeared ſufficient, but did not poſitively return that the Parties were lawfully married. *Wright* for the Plaintiff moved for Judgment upon this return; but the Court refuſed it, and told the Serjeant he might move again if he thought fit, giving Notice of the Motion, that the other Side might have an Opportunity of diſputing the Sufficiency of the Return.

Note; The Return was afterwards amended, and the Fact certified inſtead of the Evidence; and Plaintiff had Judgment.

Freeman and his Wife, *Demandants*; Canham and others, *Tenants*. Eaſt. 8 Geo. 2.

In Dower. *WRIGHT* moved to ſet aſide the *Grand Cape*, Proclamation not having been made fourteen Days before the Return of the Summons, according to the Statute 31 *Eliz. cap.* 3. *ſect.* 2. the Summons was returnable *Craſt. Animar.* and Proclamation made *October* 27, which was but ſix Days before the Return: The Court made a Rule to ſhew Cauſe, which was afterwards made abſolute, no Cauſe being ſhewn.

Welch *verſus* Pennington, *Page* 395
Wells *v.* Treherne, 346
Wells *v.* Hayward, 489
Weſt *v.* Hedges, 211
Whadcock *v.* Froſt, 447
Whadcock *v.* Fowler, 262
Whaley *v.* Harriſon, 360
Wheeler *v.* Marlow, 452
Wheeler *v.* Swarbrook, 100
Whetham *v.* Needham, 46
White *v.* Hawkes, 394
White *v.* Whithall, 323
White *v.* Dunſter, 321
White *v.* Parſons, 391
Whitehall *v.* Carr, 465
Whitehead *v.* Gale, 106, 277
Whitehead *v.* Roe, 499
Wheeler *v.* Stretch, 497
Wilſon *v.* Milner, 364
Webb *v.* Dorwell, 400
Welch *v.* Richards, 468
Whitelock *v.* Hart, 452
Whitfield *v.* Whitfield, 109
Whitham *v.* Hill, 151
Wignall *v.* Bouch, 171
Wilcock *v.* Bownas, 360
Wilcox *v.* Proſſer, 95
Wilcox *v.* Sharpe, 273
Wilkes *v.* Broadbent, 266
Wilkin *v.* Nutkins, 96
Wilkinſon *v.* Guy, 314
Wilkinſon *v.* Carleton, 86
Wilks *v.* Broadbent, 15, 133
Williams *v.* Hill, 357
Williams *v.* Palmer, 130
Williams *v.* Manning, 87
Williamſon *v.* Rownſon, 207
Willoughby *v.* Vincent, 43
Willoughby *v.* Cracraft, 227
Wilſon *v.* Ridley, 420
Wilſon *v.* Rickabey, 490
Wilſon *v.* Finch, 163
Wilſon *v.* Davids, 18
Wilſon *v.* Lafortune, 104
Wilſon *v.* Barber, 312
Wilſon *v.* Thruſtout, 149
Wiltſhire *verſus* Saville, *Page* 165, 270
Wingfield *v.* Beard, 419
Winkworth *v.* Wyat, 33
Wenton *v.* Lloyd, 148
Withall *v.* White, 261
Wittall *v.* Taylor, 355
Witton *v.* Eaſt, 23
Witton *v.* Weddall, 23
Woeden *v.* Sanders, 460
Wolfenden *v.* Seed, 148
Wood *v.* Dodſon, 278
Woodcock *v.* Kettleby, 86
Woodhouſe *v.* Swinley, 226, 271
Woodley *v.* Tompkins, 387
Woodman *v.* Dapp, 313
Watts *v.* Birkett, 220
Whitby *v.* Chapman, 364
Williams *v.* Mainwairing, 401
Woolſey *v.* Armſtrong, 467
Wiatt *v.* Packer, 323
Wright *v.* Swayne, 289
Woodyear *v.* Thruſtout, 131
Wortley *v.* Pitt, 420, 421
Wrey *v.* Thorn, 454
Wright *v.* Treeweeke, 432
Wright *v.* Goſtelow, 86
Wright *v.* Bennington, 286
Wyatt *v.* Winkworth, 33
Wynne *v.* Thomas, 17
Woodnott *v.* Lilly, 111
Wright *v.* Pelham, 150

Y.

Young *v.* Wood, 69
Young *and* Paul, 481
Younges *and* Cooper, 3
Yates *v.* Gunn, 141
Yate *v.* Swaine, 233
Yeoman *v.* Roſs, 285
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Note; The Return was afterwards amended, and the Fact certified inſtead of the Evidence; and Plaintiff had Judgment.

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King *againſt* The Biſhop of Carliſle and the Maſter and Scholars of the Univerſity of Cambridge. Trin. 11 & 12 Geo. 2.

In Quare Impedit. WYNNE for Defendants moved, That the Plaintiff *King* claiming a Right of Patronage might be examined upon Oath touching ſecret Truſts for Papiſts, purſuant to Stat. 12 *Ann. cap.* 14. and a Commiſſion for ſuch Examination was ordered to iſſue, directed to the three Prothonotaries, or any two of them.

Rutter *againſt* The Biſhop of Hereford and the Univerſity of Cambridge. Trin. 16 Geo. 2.

In Quare Impedit. THE Court ordered a Commiſſion to examine touching ſecret Truſts for Papiſts, according to the Statute 12 *Ann.* to Commiſſioners in the Country, and directed the Prothonotary to ſtrike Commiſſioners Names, and ſettle the Interrogatories. *Hayward* for Plaintiff; *Birch* for Defendants.

Foſter *againſt* Kirkley. Trin. 26 & 27 Geo. 2.

In Dower. THE Tenant after appearing to the *Grand Cape*, returnable the third Return of this Term, obtained a Rule, on *Poole*'s Motion, to ſhew Cauſe why he ſhould not have an Imparlance; which was diſcharged on hearing *Draper* for the Demandants. In Dower *unde nichil habet*, or any other real Action, Imparlance is not to be given; Eſſoins are ſufficient Delay; real Actions are not within any of the Rules of Court concerning Imparlances.

Amendments.

Hampſon *againſt* Chamberlain. Mich. 6 Geo. 2.

A Motion was made to amend the Entry upon Record, according to the Writs of *Sci. Fac.* and *Certiorari*, and the Returns thereof after Iſſue joined upon *Nul tiel Record.* The Court held that Amendments ought to be made by Common Law, without an Act of Parliament, where there is any thing to amend by; and therefore ordered the Entry upon Record to be amended, and made agreeable to the Writs of *Sci. Fac.* and *Certiorari*, and the Returns thereof, upon Payment of Coſts, the Entry being made imperfectly by Miſpriſion of the Clerk.

Clarke *againſt* Cotton, an Attorney.

A Bill was filed in this Cauſe againſt the Defendant as an Attorney of the Court; and the Bill by Miſtake of the Plaintiff's Attorney did conclude, *& inde producit ſectam, &c.* inſtead of *& inde petit Remedium, &c.* Upon Motion in the Treaſury the Judges were pleaſed to order the Bill to be amended by ſtriking out the Words *producit ſectam*, and inſerting inſtead thereof the Words *petit Remedium*, upon Payment of Coſts to be taxed, *Niſi cauſa*; and the Rule was afterwards made abſolute upon an Affidavit of Service. This Caſe is like that where the Curſitor may amend an Original by his Inſtructions, even in Subſtance; and in mere Form the Court will ſuffer him to amend his own Miſtake. The Inſtructions here given to the Plaintiff's Attorney were to file a Bill, which he hath not done; he hath made it a Declaration by this wrong Concluſion, and not a Bill, according to his Inſtructions.

Cooper, an Attorney, *againſt* Younges. Hil. 6 Geo. 2.

MOTION was made to amend the Continuance on the Roll by ſtriking out a General Return, and making it a Day certain; the Action being at the Suit of an Attorney, the Court at firſt made ſome Difficulty in granting the Rule for an

Amendment, it being after Judgment on Demurrer; but upon Conſideration, Continuances being merely the Acts of the Court, the Amendment was ordered.

Hale *againſt* Breedon. Trin. 6 & 7 Geo. 2.

THE *Placita* in the Record of *Niſi Prius* was of *Eaſter* Term laſt; the Declaration was in *Latin* of *Hilary*, entered with an *Alias prout patet*; the Plea was without Imparlance of the ſame Term in *Engliſh*. *Chapple* and *Eyre* moved in Arreſt of Judgment, and obtained a Rule *Niſi*, which was afterwards diſcharged upon *Darnall*'s ſhewing for Cauſe, that the Imparlance was entered upon the Plea-Roll, and that the Record of *Niſi prius* was amendable thereby.

Welland, an Attorney, *againſt* Pitts. Mich. 7 Geo. 2.

THE Bail-piece was ordered to be amended by making the Recital of the Writ of Attachment of Privilege agreeable to the Writ itſelf, *viz.* inſerting the Return thereof, which was omitted in the Bail-piece, and in other Particulars. *Eyre* for Plaintiff; *Urlin* for Defendant.

Note; A Rule to bring in the Body had been ſerved upon the Sheriffs of *London*; and Plaintiff inſiſted upon Coſts on the Amendment of the Bail-Piece, but was told by the Court he muſt proceed upon his Rule againſt the Sheriff for Coſts, if he was entitled to any; it was not proper to aſk for Coſts upon this Motion.

The Bail, immediately after the Amendment of the Bail-piece, juſtified themſelves in Court, notwithſtanding which Plaintiff afterwards moved for an Attachment againſt the Sheriffs for not bringing in the Body; which was granted upon Affidavit made of Perſonal Service of the Rule upon the High Sheriffs (no Cauſe being ſhewn.)

Sweetland *againſt* Beezley and Browne. Hil. 7 Geo. 2.

A *Sci. Fac.* againſt Bail, and all the Proceedings thereupon were ordered to be amended by the Record in the original Action, by inſerting the Word *Merchant* inſtead of *Mercer*, being the Defendant's Addition, after Iſſue joined upon *Nul tiel Record*. *Chapple* for Plaintiff; *Eyre* for Defendants.

Browne *againſt* Shipman.

UPON a common *Clauſum fregit*, Plaintiff declared againſt Defendant as Adminiſtrator, and he pleaded that Adminiſtration was never committed to him; Plaintiff's Attorney moved in the *Treaſury*, that Plaintiff might amend his Declaration upon Payment of Coſts, by declaring againſt Defendant as Executor, which, upon hearing Defendant's Attorney, was ordered.

Sharp *againſt* Stacye. Eaſter 7 Geo. 2.

THIS was an Action of Debt upon a Recognizance of Bail, to which the Defendant pleaded Payment; the Plaintiff replied Non-payment, and concluded with an Averment, inſtead of *to the Country*, whereto Defendant demurred generally; and the Queſtion upon the Argument was, Whether this was helped by the Statute for the Amendment of the Law, 4 & 5 *Annæ*; the Court gave Judgment for the Plaintiff, *Niſi*; but the Plaintiff afterwards, upon adviſing with his Counſel, moved to amend upon Payment of Coſts. *Birth* for Defendant; *Skinner* for Plaintiff.

Waldo *againſt* Harriſon, an Attorney.

BAYNES moved to amend the Writ of *Habeas Corpora Jurator* after Trial, returnable on *Wedneſday* next after eight Days of the Purification, inſtead of *Wedneſday* in fifteen Days of *Eaſter*: Court made a Rule to ſhew Cauſe, which was afterwards made abſolute upon hearing Counſel on both Sides. *Chapple* and *Skinner* for Defendant.

Waldo *againſt* Harriſon. Trin. 7 & 8 Geo. 2.

THE Writ of *Habeas Corpora Jurator'* being wrong in the Day of *Niſi prius*, had been ordered to be amended; and

Baynes afterwards moved to amend the *Jurata* in the Record of *Niſi prius:* The Court after Conſideration were of Opinion, that as the Writ was amendable by the Statute 5 *Geo.* and was amended, and the Day of *Niſi prius* thereby rightly appointed, the *Jurata*, which is not an Award of the Court, but only to annex the Proceedings, and is wrong by Miſpriſion of the Clerk, ought to be amended and made agreeable to the Writ; and the Amendment was ordered.

Taylor *againſt* Bramble. Mich. 8 Geo. 2.

PLaintiff obtained a Rule to ſhew Cauſe why his Declaration ſhould not be amended on giving an Imparlance; upon ſhewing Cauſe, it appeared that Defendant had demurred and given a Rule to join in Demurrer, and therefore Plaintiff muſt pay Coſts, and cannot amend on giving an Imparlance. Rule abſolute on Payment of Coſts.

Williams *againſt* Jones and another. Eaſter 8 Geo. 2.

THIS Cauſe was tried at *Niſi prius* before the Lord Chief Juſtice, and a Verdict taken by miſtake of the Aſſociate generally for Plaintiff againſt both Defendants, inſtead of finding Defendant *Edward Jones* Not Guilty; as to the other Defendant, a Verdict was found for the Plaintiff, Damages 200*l*. Plaintiff moved that the Return of the *Poſtea*, as to *Jones*, might be amended; which was ordered on the Chief Juſtice's Report, and hearing Counſel on both Sides. The Return of the *Poſtea* is the Act of the Chief Juſtice, and muſt be made as it ought to be: It was urged by Defendant's Counſel, that the Verdict as to the other Defendant, was contrary to Evidence; but be that ſo or not, the Verdict being right in Part cannot be ſet aſide. *Darnall* and *Wright* for Defendants; *Eyre* for Plaintiff.

Southam *againſt* Jennings. Mich. 9 Geo. 2.

THIS was a *Teſtat' Capias* from *London* into *Oxfordſhire*, and Bail put in thereon with the Filazer of *London:* Plaintiff by Miſtake declared in *Oxfordſhire*, and afterwards moved in the

Treaſury to amend by declaring in *London*, according to his Writ; which was ordered upon Payment of Coſts, though after Plea pleaded.

Deacon *againſt* Vivian. Eaſter 9 Geo. 2.

In the Treaſury. A Judgment by *Non Inform'* was ſigned *Dec.* 22, by Virtue of a Warrant of Attorney, dated *Oct.* 31, in *Michaelmas* Term laſt, and the Roll was filed generally of ſaid *Michaelmas* Term. A Writ of Error was brought, and afterwards Plaintiff's Attorney moved to amend the Record according to the Fact, by inſerting at the Top of the Roll from the Day of St. *Martin* in fifteen Days, in *Michaelmas* Term, in the 9th Year, *&c.* to prevent the Judgment's having Relation to the Eſſoin-Day of the firſt Return, which would have vitiated it, the Day laid in the Declaration on a *Mutuatus* being *Oct.* 31. (the Date of the Warrant of Attorney;) and upon hearing the Attornies on both Sides the Amendment was ordered.

Cartwright *againſt* Gardiner.

SKINNER moved for the Plaintiff to amend the Iſſue-Roll by ſtriking out the Award of the *Venire facias* by *Decem tales*, and awarding the common *Venire facias*; this was oppoſed by *Hawkins* for Defendant; and there being nothing to amend by, the Court did not make any Rule.

Coates *againſt* Midgley. Trin. 10 Geo. 2.

In Prohibition. THE Declaration was ordered to be amended by a Judge; but the Amendment not being warranted by the Suggeſtion, or the Acts of the Spiritual Court, the Order was diſcharged. *Chapple* for Defendant; *Eyre* for Plaintiff.

Foſter *againſt* Blackwell. Eaſter 10 Geo. 2.

PARKER moved to amend the Judgment-Roll, by ſtriking out that the Plaintiff ought to recover, and inſerting that the

Plaintiff do recover, after a Writ of Error brought, *& in nullo eſt errat'* pleaded, which was ordered on Payment of Coſts, provided Defendant do not farther proſecute his Writ of Error; but if he proceeds in Error, without Coſts. *Parker* for Plaintiff; *Chapple* for Defendant.

Scrape *againſt* Rhodes. Trin. 10 & 11 Geo. 2.

On Special Verdict in Ejectment.

THE Matter in Law had been argued, and the Court having taken Time to conſider, *Skinner* for Plaintiff moved to enlarge the Demiſe, which was near expiring; but *Eyre* for Defendant not conſenting, the Court declared they had no Power to enlarge the Demiſe without Conſent.

Lee *againſt* Daniel. Hil. 11 Geo. 2.

BELFIELD moved to amend the Declaration after the Plea-Roll filed: *Draper* objected that the Motion ought to be to amend the Roll, and not the Declaration; that the Amendments prayed being very long, could not be made without defacing the Roll, which ought not to be ſuffered. *Belfield* replied, that a *Vacatur* might be marked on the Roll filed, or it might be taken off the file, and a new Roll of the ſame Number be filed in its Place; but *per Cur'* that Practice is not warrantable, and the Amendments prayed being ſuch as would greatly deface the Roll, the Motion was denied.

Harry *againſt* Bant.

BELFIELD moved for Leave to amend the Avowry by altering the Sum due for Rent, which was miſcomputed: *Draper* oppoſed the Motion, Demurrer being joined, and the Cauſe in the Paper for Argument. *Per Cur'*: Defendant muſt amend on Payment of Coſts.

Jeane *againſt* Langton, late Sheriff of Somerſetſhire.

DEfendant moved for Leave to amend his Return of *Re' fa' lo'* filed in *Mich.* Term 1735, by adding Pledges. In the

Replevin Cauſe, Judgment went for Defendant in the Plaint for want of Plaintiff's declaring in this Court, and a *Retorn' habend'* was iſſued, and an *Elongat'* returned thereon: And now this Action was brought againſt the Sheriff for not taking Pledges: Defendant pleads he took Replevin Bond, whereto Plaintiff demurs. *Per Cur'*: The Pledges ought to be recorded in the Court below, no Affidavit is produced of that fact, here is nothing to amend by. Rule to ſhew Cauſe for Amendment diſcharged. *Eyre* and *Draper* for Plaintiff; *Belſield* for Defendant.

Farmer *againſt* Burton. Eaſt. 11 Geo. 2.

AFTER Argument upon Demurrer, Plaintiff moved to amend the Declaration; which was granted, the Merits of the Cauſe not coming in Queſtion upon the Argument, but only the Form of Pleading. *Parker* for Plaintiff; *Girdler* and *Hayward* for Defendant.

Woodman *againſt* Inwen. Trin. 11 & 12 Geo. 2.

AFTER Argumeat upon Demurrer, and a Rule for a farther Argument, Defendant moved to amend the Avowry by inſerting three neceſſary Requiſites to juſtify his Diſtreſs; but the Amendment was denied, the former Argument having been upon the Merits, and there not being ſufficient Matter ſet out in the Avowry to amend by. *Urlin* and *Parker* for Defendant; *Eyre* and *Draper* for Plaintiff.

King, Executor, *againſt* The Biſhop of Carliſle, the Univerſity of Cambridge, Lamb and Gibſon. Mich. 12 Geo. 2.

In *Quare Impedit*. BOOTLE moved to amend the Original Writ and Declaration, by making the Plaintiff a Co-Adminiſtrator inſtead of Executor; he urged the Reaſonableneſs of the Amendment from the Neceſſity of the Thing; if the Original cannot be amended, ſix Months being paſſed, a Lapſe will incur. He cited *Cro. Eliz.* 119. *Rookſby's*

Caſe. *Cro. Car.* 74. *Turner* againſt *Palmer*. 4 *Lev.* 12. 3 *Lev.* 347. *Fitzgibbon* 193. *The Ducheſs of Marlborough* againſt *Wigmore*; *Merrick* againſt *The Hundred of Oſſulſton, Paſch.* and *Trin.* 10 *Geo.* 2. in *B. R.* The Court made a Rule to ſhew Cauſe; *Skinner* and *Wynne* ſhewed Cauſe, and inſiſted, that all the Caſes cited for the Amendment were of Miſpriſions where the Officer has miſtaken his Inſtructions, and upon Affidavit and Examination of the Officer *ore tenus* in Court, Amendments have been made. *Skinner* cited *Turner* againſt *Peck, Mich.* 4 *Geo.* 2. in *B. R.* *Per Cur'*: The Doctrine of Amendment of Original Writs (which is not by Common Law, but *per Stat.* 8 *Hen.* 6.) is ſettled in the Books; *1ſt*, No Amendment of an Original Writ can be made, unleſs for Neſcience or Miſpriſion of the Clerk. *2dly*, There muſt be ſomething to amend by: In this Caſe both theſe Requiſites are wanting. The Court will take Care that the Suitor ſhall not ſuffer by the Officer's Error; but had the Miſtake been the Attorney's, the Party muſt be put to his Remedy againſt him: The Court could not amend it. Here the Writ is agreeable to the Inſtructions, ſo there is nothing to amend by. The Rule was diſcharged.

The King *againſt* Hartop, late Sheriff of Leiceſterſhire.

AN Attachment of Contempt having iſſued againſt Defendant for not returning a Writ, he was examined upon Interrogatories; and *Belfield* moved for Defendant for Leave to amend his Examination upon the fourth Interrogatory; Defendant having by Miſtake therein referred to his own Affidavit inſtead of an Affidavit made by other Perſons. *Agar* oppoſed the Motion, and prayed that the Proſecutor might amend a Miſtake in the Title of the Interrogatories. *Per Cur'*: Let the Title of the Interrogatories be amended, and let Defendant be re-examined on the fourth Interrogatory; the Amendment of the Interrogatories was to entitle them between *The King* and *Hartop*, inſtead of the Original Cauſe, wherein the Writ was not returned.

Browne *againſt* Hammond. Eaſter 12 Geo. 2.

AFTER Writ of *Capias ad ſatisfaciend'* executed, *Agar* moved to amend the Writ by the Record of the Judgment, making Defendant's Name *Edmund* inſtead of *Edward*, and obtained a Rule to ſhew Cauſe, which on Affidavit of Service was made abſolute.

Maſon *againſt* Littlehales, Attorney.

By Bill. THE Court gave Leave to amend the Declaration by ſtriking out the Words (*brings Suit*) and inſerting (*prays Relief*) upon Payment of Coſts, though the Court ſeemed to think the Amendment unneceſſary. *Bootle* for Plaintiff; *Hayward* for Defendant.

Fowke *againſt* Horabin and others. Trin. 13 & 14 Geo. 2.

AFTER a Verdict found for the Plaintiff, ſeveral Objections were made in Arreſt of Judgment: The principal were, That tho' the Action was Treſpaſs upon the Caſe, the *Jurata* at the Foot of the Record of *Ni. pri.* was in Treſpaſs only. That inſtead of ſaying, unleſs the Chief Juſtice ſhould come before on the 12th of *July*, it was ſaid, unleſs he ſhould come before the 12th of *July*. That two of the Defendants being Sheriff of *Middleſex*, the *Ve. fa.* was awarded to the Coroners, but by the *Jurata* the Writ was alledged to be delivered to the Sheriff to be executed. That the Writ of *Ve. fa.* inſtead of being made returnable in Court, was made returnable before the Chief Juſtice. And that the Declaration recited an Original againſt *James Brooke* and others, and counted againſt the ſaid *John Brooke*. As to the firſt Objection, the Court held it to be helped by the Statute of Jeofails. As to the ſecond Objection, by the Writ of *Ha. cor. Jur.* the Day of Trial was rightly appointed, and the *Jurata* is amendable by the Writ. As to the third Objection, The *Ve. fa.* appeared to be returned by the Coroners, and the *Jurata* is only wrong by Miſpriſion of the Clerk. The Return of the *Ve. fa.* tho' defective, is within the Statutes of Amendment. And as to the laſt Objection, the Word *John* in the Declaration muſt be rejected, and then the Count will ſtand againſt the ſaid *Brooke*, which muſt be the *James Brooke* before mentioned. The ſeveral neceſſary Amendments were ordered, and thereupon the Rule to ſtay the Entry of Final Judgment was diſcharged, and the Plaintiff's Attorney, who had made ſo many groſs Blunders, was ordered to pay Coſts. *Prime* and *Draper* for Defendants; *Wynne* and *Agar* for Plaintiff. *Vide* Waldo *againſt* Harriſon. Trin. 7 & 8 G. 2.

Cook *againſt* Shone and others.

THIS was an Action brought againſt Defendants, Surveyors, *&c.* for building *Weſtminſter* Bridge, for taking away and deſtroying Plaintiff's Timber, to the Value of 500 *l.* and by the Act of Parliament for building the ſaid Bridge, Plaintiff is confined to bring his Action within ſix Months, and to lay it in *Middleſex*. By Miſtake of *Gillman*, Plaintiff's former Attorney, who now abſconds, the Action was laid in *London* inſtead of *Middleſex*. And the Miſtake was not diſcovered till after Plea pleaded and Iſſue joined. The Fact appeared to be committed on 22d *Auguſt* 1739, and the Action to be commenced within the ſix Months. Plaintiff now moved for Leave to change the *Venue* from *London* to *Middleſex*; which was ordered, upon Payment of Coſts. If the Amendment could not be made, Plaintiff muſt loſe his Remedy; he is now too late to bring a new Action. In an Action upon a Penal Statute the Court probably would not interpoſe, but in the Caſe of a Remedial Law, the Amendment muſt be made. *Skinner* for Plaintiff; *Prime* for Defendant. 3 *Lev.* 347. *Bearcroft* againſt *The Hundred of Burnham*.

Maſters *againſt* Ruck.

In Error. THE Teſte of a Writ of *Certiorari*, by Miſtake, was made in the 13th Year of our [Lord] inſtead of our [Reign]. Upon a Motion for Leave to amend the ſame, it was doubted whether the Court had Power to amend ſuch a Writ, or not. In order to ſupport the Amendment, *Prime* for Plaintiff cited the Statutes of Amendment, 8 *H.* 6. *c.* 8. and 14 *Ed.* 3. *c.* 6. and the Caſe of *Brooke and others* againſt *Cooper*, *in B. R. Trin.* 6 *G.* 2. to ſhew that the Teſte of a Writ of Inquiry out of Term was amended; and an Anonymous Caſe in 3 *Ventris* 171. as to different Sorts of Amendments; and *Blackmore*'s Caſe in the 8th Report. *Draper* for Defendant inſiſted, that this was ſuch a Writ as could not be amended; and he cited the

Caſe of *Heath* againſt *Paget*, 1 *Lev.* 2. to ſhew, that no Original Writ can be amended; and to ſhew that the Teſte of a Writ of Error is not amendable, he cited the Statute 5 *G. c.* 13. But *Prime* by Reply argued, that this is not an Original but a Judicial Writ, therefore amendable by all the Statutes of Amendment. The Court doubted; and pending their Conſideration, in *Trinity* Term 1740, the Amendment, by Conſent of the Parties, was ordered, on Payment of Coſts.

Chriſtie *againſt* Huggins.

THIS was an Action brought by Plaintiff againſt Defendant for ſuffering Sir *Alexander Anſtruther* to eſcape out of his Cuſtody, when Warden of the *Fleet*; and Iſſue was joined in *Trinity* Term 11 *G.* and Plaintiff having by his Declaration, among other Things, ſhewn, that Sir *Alexander* was removed from the *King's Bench* by *Ha. cor.* teſted 26th *June* 10 *G.* being the laſt Day of *Trinity* Term, returnable *immediatè*, before Mr. Juſtice *Dormer*, and by that Judge committed to the *Fleet*. It was (as Plaintiff thought) requiſite to prove a Copy of the Entry of ſuch *Ha. cor.* upon the Roll, with the Return thereto, and the Commitment of Sir *Alexander* thereon, at the Trial of the Cauſe. Therefore a Motion was made, *Eaſter* 12 *G.* 2. on Plaintiff's Behalf, that ſuch a Roll might be filed; and a Rule was granted to ſhew Cauſe.

On Defendant's Behalf it was alſo moved, that the Roll on which the Iſſue between the Parties had been entered, might be taken out of the Bundle of Rolls in the Treaſury, and vacated, and that the Clerk of the Treaſury might be reſtrained from receiving any Roll in this Cauſe, without Leave of the Court. And a Rule *Niſi* was granted, upon Affidavits that ſeveral Searches had been made at different Times in the Treaſury for that Roll, and that it was not then filed, and it likewiſe appeared, that a Caution had been given to the Treaſury-Keeper againſt receiving this Roll. The Clerk of the Treaſury and Treaſury-Keeper were directed to attend, to inform the Court what the Practice is concerning the bringing in and filing of Rolls in the Treaſury, and how the ſaid Iſſue Roll came into the Bundle.

Upon Cauſe being ſhewn againſt the above Rules, in *Trinity* Term 1740, as to the Iſſue Roll it appeared, that the Clerk of the Eſſoins had made two different Files of the ſame Numbers of *Trinity* Term, and that neither the Clerk of the Treaſury or Treaſury-Keeper know any thing of that Roll coming into the Treaſury; conſequently that it was in the Bundle when the Search had been made by Defendant: But as there was no Apprehenſion of there being two different Files of the ſame Numbers, this Roll was not found for want of ſearching that File, (where it really was) but the other. And as to the other Roll, it appeared that the Entry produced, which Plaintiff wanted to file, was made upon a Roll of *Michaelmas* Term 10 *G.* 2. that being the Term in which it was alledged Mr. Juſtice *Dormer* had delivered the Writ, *&c.* into Court to be recorded; and that an Entry had been made of the *Ha. cor.* Return and Commitment, upon a Roll of *Trinity* Term, when the Writ was teſted, and that the ſame was filed among the Rolls of that Term, which the Court thought was an Entry of the proper Term: But ſuch Entry not agreeing exactly with the *Ha. cor.* and it not ſhewing that Mr. Juſtice *Dormer* had on the firſt Day of *Michaelmas* Term delivered the Writ, *&c.* into Court, to be inrolled, the Court therefore diſcharged both the Rules to ſhew Cauſe, and ordered that the Entry of the Writ of *Ha. cor. &c.* upon the Roll of *Trinity* Term ſhould be amended, by inſerting (*cameram ſuam ſituat' in le Serjeants Inn in le Chancery Lane London*) thoſe being the Words omitted in the Entry which were in the Writ; and that the following Words ſhould be inſerted at the Concluſion of ſuch Entry, (*viz.*) *Quam quidem Commiſſionem idem Juſtic' Robertus Dormer Ar' poſtea ſcilt' viceſimo tertio die Octobris Anno regni dicti Domini Regis nunc undecimo per manus ſuas proprias deliberavit hic in Cur' de recordo irrotuland' ac irrotulat', &c. Skinner* and *Prime* for Defendant; *Agar* and *Draper* for Plaintiff.

Stone *againſt* Overton. Hil. 14 G. 2.

RULE to ſhew Cauſe why a new Record of *Ni. pri.* and *Ha. cor. Jur.* ſhould not be made out and returned by the Aſſociate, agreeable to his Minutes taken at the Trial, the old Record having been loſt, made abſolute. It was objected for Defendant, that the Names of the twelve Jurors who were ſworn cannot now be known, (the Aſſociate not having kept any Entry of their Names) ſo as to make a new Return. But the Objection was over-ruled; the Jurors are not now named in the Return of the Record of *Ni. pri.* or in the Final Judgment, nor were they before the late Ballotting Act, unleſs in Caſe of a *Tales*. *Draper* for Plaintiff; *Gapper* for Defendant.

Broadbent *againſt* Wilkes. Eaſter 14 Geo. 2.

DEfendant miſtook a Fact, and ſet out a Cuſtom wrong; he applied to Mr. Juſtice *Parker* for Leave to amend, but Plaintiff not conſenting, the Judge made no Order. Plaintiff ſigned Judgment, and before Enquiry executed, Defendant gave Notice of Motion: Defence was made on the Enquiry. *Per Cur'*: Let the Judgment and Enquiry be ſet aſide, and let the Plea be amended on Payment of Coſts, and Defendant's bringing 15 *l.* Damages, found by the Inquiſition, into Court. *Bootle* for Defendant; *Draper* for Plaintiff.

Priddle *againſt* Skurray and others. Trin. 14 & 15 Geo. 2.

MR. Juſtice *Forteſcue Aland* made an Order that Plaintiff ſhould have Leave to amend his Declaration, in the Particulars to the Order annexed. Defendants moved to diſcharge the Order upon the Face of it for Precedent Sake. Particulars are the Subſtance of the Order, and ought to be inſerted in the Body of it. Of that Opinion were the Court, and the Rule to ſhew Cauſe why the Order ſhould not be diſcharged, was made abſolute. *Belfield* for Defendants; *Burnet* for Plaintiff.

Anonymus. Hil. 14 Geo. 2.

PER Cur': In an Action on a Penal Statute, Defendant cannot plead doubly. This Caſe is not within the Statute for the Amendment of the Law.

Ingham *againſt* Chiſhull and Noke. Eaſter 17 G. 2.

THIS was a joint Action on ſeveral Aſſumptions. *Chiſhull* pleaded Bankruptcy. *Noke* pleaded a former Recovery for the ſame Demand. After Judgment againſt *Noke* on *Nul tiel Record*, Plaintiff confeſſed *Chiſhull's* Plea to be true, and entered a *Nolle proſequi* as to him, purſuant to the Statute 7 *Ann*. Plaintiff made out his Writ of Enquiry in the ſame Manner as if the interlocutory Judgment had been againſt both Defendants; but by the Inquiſition, Damages were found againſt *Noke* only. Defendant *Noke* moved to ſet aſide the Writ of Enquiry and Inquiſition, and obtained a Rule to ſhew Cauſe; pending which Rule, Plaintiff moved to amend the Writ, by ſtriking out *Chiſhull's* Name after the *Taliter proceſſum fuit*; and the Rule for the Amendment was made abſolute, without Oppoſition. After which Amendment the Writ tallied with the Inquiſition, and the Defendant's Rule was diſcharged. *Draper* for Plaintiff; *Skinner* for Defendant *Noke*.

Greenwood *againſt* Richardſon, one, &c. Mich. 19 Geo. 2.

THE Bill was, by Miſtake, entitled *Trin.* 19 *Geo.* 2. inſtead of 19 & 20. Defendant moved to ſtay Proceedings, and had a Rule to ſhew Cauſe; which Rule was diſcharged, and the Title of the Bill ordered to be amended, on Payment of Coſts. Plaintiff alledged, that the Statute of Limitations would take Place if he was put to file a new Bill. But the Court paid no Regard to that. *Clarke* againſt *Cotton, one, &c. Mich.* 6 *Geo.* 2. was quoted, where the Bill was amended from *producit ſectam* to *petit Remedium*; *producit ſectam* ſignifies no more than that Evidence is ready, *petit Remedium* ſeems unneceſſary. The Court have a different Controul over Original Writs iſſued out of Chancery, and Original Bills filed here. This *Vitium Clerici*, or *Neſcience* of the Clerk of the Court, is amendable by his Inſtructions, and by the Entry of the Bill in the Prothonotary's Book of *Trin.* 19 & 20. An Original out of Chancery is amendable by the Curſitor's Inſtructions. This Caſe is not ſimilar to a Declaration in Ejectment; the Title thereof is not amendable, there being nothing to amend by. *Hayward* for Plaintiff; *Draper* for Defendant.

Beaumont *againſt* Coſin, one, &c. Hil. 19 Geo. 2.

RULE to ſhew Cauſe on Plaintiff's Application, why Declaration ſhould not be amended, by inſerting in the Memorandum the true Day of proclaiming, *viz.* 28th *November*, (inſtead of 23d *October*, which was before the Cauſe of Action.) Rule abſolnte, on Payment of Coſts. Defendant to have Time to plead *de novo*, pleading in Bar. *Bootle* for Plaintiff; *Agar* for Defendant.

Driver, on the Demiſe of Scrutton, *againſt* Scrutton and others. Hil. 18 Geo. 2.

In Ejectment. RULE to ſhew Cauſe why the Demiſe ſhould no tbe amended in Point of Time diſcharged. This is never done without Conſent. *Willes* for Plaintiff; *Prime* for Defendant.

Wynne, Eſq; and Kynaſton, Eſq; *Demandants*, Thomas, Gent. *Tenant*, Apperly, Dr. of Phyſick, and Alathea his Wife, *Vouchees*, by Attorney. Hil. 18 Geo. 2.

WRIT of Entry returnable. *Quinden Paſchæ*, Teſted 2d *April*, laſt Summons returnable *Craſtino Aſcenſionis Domini*, being 16th *May*; the *Dedimus Poteſtatem* to take the Vouchees Warrant of Attorney bore Teſte 25th *April*, and the *Mittimus* 18th *May*. The Recovery was arraigned at Bar 5th *May*. Mrs. *Apperly* the Wife, a Vouchee, died 10th *May*, ſix Days before the Return of the Summons. A Writ of Error being brought, and the Death of the Vouchee before the Return of the Summons, aſſigned for Error in Fact, Application was made to this Court to amend the Teſte and Return of the Writ of Entry, and a Rule to ſhew Cauſe. The Court, after hearing Counſel on both Sides, and Conſideration, was of Opinion, That all Amendments muſt be conſiſtent with Rules of Law, and there muſt be ſomething to amend by. In this Caſe, the

Vouchees by Law could not appear till the Return of the Summons; and the Power of Attorney given by *Alathea* to appear at that Day, was revoked by her Death in the intermediate Time. By Statute 3 *H.* 6. *c.* 12. Original Writs amendable if wrong by Miſpriſion of the Clerk, or where there is any thing to amend by. Here is no Miſpriſion of the Clerk; the Writ is made agreeable to his Inſtructions, and nothing to amend by. The Amendment prayed, is to amend in the firſt Inſtance. The Rule diſcharged. *Willes & al.* for Doctor *Apperly* and Demandants and Tenant; *Skinner & al* for *Wyune*, Eſq; and his Wife, entitled to the Eſtate in Remainder.

Beaumand *againſt* Stuart, a Priſoner. Hil. 20 Geo. 2.

RULE abſolute, giving Plaintiff Leave to deliver a new Iſſue properly entitled; in the Title of the Iſſue already delivered, the Word (*George*) was omitted; it ſtood thus, *Hilary* Term 20th King the Second. *Wynne* for Plaintiff; *Bootle* for Defendant.

Marks, Spinſter, *by* Brimmer her next Friend. Trin. 21 Geo. 2.

PLaintiff's next Friend ſworn to be a material Witneſs for Plaintiff, who was now of full Age: Plaintiff moved and had Leave to ſtrike out *Brimmer*.

Davids, Spinſter, *againſt* Wilſon. Hil. 21 Geo. 2.

RULE to ſhew Cauſe why final Judgment on Verdict ſhould not be amended *in particularibus*; after Writ of Error and Record tranſcribed, but the Tranſcript not carried into the King's Bench. The Amendments were, to inſert the Words

agreeable to the ſtanding Form uſed by the Clerks of the Judgments; ſome other little Miſtakes, which were *Vitium Clerici*; and to make a Juryman's Name *Marſhall* inſtead of *Marſhell* by the Panel, &c. to make the Record conſiſtent; on reading *Poſtea Ha. cor.* and Panel. *Skinner* for Plaintiff; *Belfield* and *Poole* for Defendant.

Garway *againſt* Stevens. Eaſter 21 Geo. 2.

PLaintiff moved to add a new Count to his Declaration, which was of laſt *Michaelmas* Term, on Payment of Coſts: Defendant objected, that by the Courſe of the Court a Count cannot be added after the ſecond Term; which was agreed to be the Practice: But as Plaintiff might diſcontinue, and to ſave the Trouble of a new Action, the Rule for the Amendment was made abſolute, on Payment of Coſts of Plea and Application, and Defendant having Leave to plead *de novo*. *Bootle* for Defendant; *Skinner* for Plaintiff.

Bird, Executor of Smith, *againſt* Foſter the younger.
Trin. 21 & 22 G. 2.

In Aſſumpſit. PLaintiff having laid his Action in *London*, and declared with a *Profert* of Letters Teſtamentary from the Biſhop's Court at *Durham*, obtained a Rule to ſhew Cauſe why he ſhould not amend the Declaration, by laying the *Venue* in *Northumberland* inſtead of *London*. On ſhewing Cauſe, the Court diſcharged the Rule, it not being uſual to amend the *Venue* at Plaintiff's Inſtance, unleſs where the Action by Act of Parliament is confined to a particular County, (ſuch as the *Weſtminſter* Bridge Act, *&c.*) and Plaintiff by Miſtake lays it in another County: Simple Contract Debts follow the Perſon of the Debtor, Specialties are Aſſets where found. In this Caſe, the Amendment prayed ſeems to be to make good an Adminiſtration, which probably is void in Law. *Bootle* and *Wynne* for Defendant; *Prime* for Plaintiff.

Bludwick and Wife, Executors, *againſt* Uſborne, Executor. Same Term.

RULE to ſhew Cauſe why Defendant ſhould not have Leave to add to former Pleas already pleaded, by Leave of the Court, two new Pleas, diſcharged. The Queſtion was Matter of Title, and the Cauſe to be tried at the Sitting after Term, Defendant had Time to apply laſt Term, he is under no Surprize: Plaintiffs can't now be prepared to anſwer new Matter. *Bootle* and *Poole* for Defendant; *Prime* and *Draper* for Plaintiffs.

Wood *againſt* Boon, Eſq; having Privilege of Parliament. Mich. 22 Geo. 2.

POOLE moved to amend the Declaration by adding Pledges to proſecute, and a Memorandum making the Declaration agreeable to the Bill on Record, on Payment of Coſts. Rule to ſhew Cauſe, which was afterwards made abſolute.

Ring, *Demandant*; Bold, *Tenant*; Harrington, *Vouchee*. Eaſt. 22 G. 2.

WILLES for the Vouchee moved to amend the Recovery, by ſtriking out *It is adjudged*, and inſerting, *It is Conſidered*. Granted abſolutely; the Amendment prayed relating to the Act of the Court in giving their Judgment.

Merefield *againſt* Hulls. Trin. 24 G. 2.

Habeas Corpus cum Cauſa to remove Defendant to the *Fleet*, was made returnable before Lord Chief Juſtice at his Chambers, and Defendant was committed by the late Mr. Juſtice *Forteſcue Aland*: Motion by *Agar*, to amend the *Ha. cor.* by making it returnable before the Judge by whom the Priſoner was committed. But *per Cur'*: The Amendment prayed is unneceſſary. The Commitment is warranted by the Practice, and is ſimilar to the *Ha. cor.* Act, 32 *Car.* 2. In the Abſence of the Chief Juſtice, the other Judge had the ſame Power.

Lacy and Garrick *againſt* Barry. Eaſter 24 Geo. 2.

In Debt, for a Penalty in Articles of Agreement.

DEfendant moved for Leave to amend his Plea, and for Oyer of the Articles, after Demurrer to the Plea, Joinder and Ar-

Argument, and farther Day appointed. On ſhewing Cauſe, the Matter of Oyer was given up, as not prayed within Time, and as to it the Rule was diſcharged; but the Amendments tending to ſtate Facts neceſſary to bring the Conſtruction of an Act of Parliament, and the true Merits of the Caſe, before the Court, the Rule as to them was made abſolute, on Payment of Coſts. Amendments to be made within three Days; and if Plaintiffs demur again, Defendant to join in Demurrer immediately. *Prime* and *Bootle* for Defendant; *Willes* and *Poole* for Plaintiffs.

Murry *againſt* Bowen. Eaſter 24 G. 2.

DEclaration of *Hilary* laſt delivered the Evening before the Eſſoign Day of this Term, with an Imparlance. Defendant's Attorney, by Miſtake, entered a Special Imparlance as for a Plea in Abatement, and then pleaded a Tender, to which Plaintiff demurred. Defendant moved, and obtained a Rule to ſhew Cauſe why he ſhould not amend his Plea, by leaving out the Special Imparlance, and pleading as of laſt Term. On ſhewing Cauſe, it was urged on Plaintiff's Part, that in Abatement there can be no Amendment: But the Declaration having been delivered ſo late, (the laſt Minute) and Pleas of Tender being in Bar, and ſuch as ought to be favoured, the Rule was made abſolute, on Payment of Coſts. *Poole* for Defendant; *Bootle* for Plaintiff.

Loggin, *Demandant*; Rawlins, *Tenant*; Pullen and his Wife, *Vouchees*.

THIS Recovery, ſuffered nine Years ago, was ordered to be amended, by putting the Word *(Trul)* the Name of a Vill, into its proper Place, according to the Deed of Uſes. *Trul* had, by Miſtake, been put into the Recovery as an Advowſon, not as a Vill where Lands lay. It was objected againſt this Amendment, 1*ſt*, That the Eſtate was in Truſtees at the Time of the Recovery, and conſequently the Truſtees not being Parties, there is no good Tenant to the *Præcipe*. 2*dly*, That the Lands are of Cuſtomary Tenure, Part of the Manor of *Taunton-Dean*. 3*dly*, That the Parties who ſuffered the Recovery were Volunteers, not to be conſidered as claiming under a Family Settlement, or as Purchaſers for a valuable Conſideration. *4thly*, That *Pullen*'s Wife is dead, and a Recovery can't now be ſuffered to diveſt thoſe in Remainder. The Court will not enter into the Queſtion, Whether or no, in Equity, Recoveries of Truſt Eſtates bar legal Remainders, or into the other Objections; when the Recovery is amended, *Valeat quantum, &c.* The Intention of the Parties is the Foundation for the Amendment. The Tranſaction appears to be fair, and without Fraud or Colluſion. The Principle upon which the Court goes, is the Statute 8 *Hen*. 6. to amend the Miſpriſion of the Clerk. A *Præcipe* is the Curſitor's Inſtruction for an Original Writ; a Deed of Uſes is the Clerk's Inſtruction for a Recovery: This *Præcipe* and this Deed are the Things to amend by. Mrs. *Pullen* being dead, an Amendment is the only Remedy left. *Prime* and *Poole* for *Pullen*; *Willes* for Lord *Middleton* and his Lady; *Belſield* for *Ready* and his Wife, Claimants in Remainder.

Dryden, Clerk, *againſt* Langley. Trinity 24 & 25 Geo. 2.

In Replevin. DEfendant had avowed for a Quit-Rent, and Iſſue was joined laſt *Eaſter* Term; Defendant moved, and obtained Rule this Term to ſhew Cauſe why he ſhould not amend, by adding three Avowries for Quit-Rent payable at different Times, on Payment of Coſts; which Rule (Plaintiff refuſing to conſent that Defendant might give the Matter in Evidence on the preſent Iſſue) was made abſolute; Defendant rejoining *Gratis*, and taking ſhort Notice of Trial. *Draper* for the Avowant; *Belſield* for Plaintiff.

Tarrant, *Demandant*; Randal, *Tenant*; Sheppard, Eſq; and another, *Vouchees*. Mich. 25 Geo. 2.

THE Recovery was ordered to be amended, by ſtriking out the Word *Adjudged*, and inſerting inſtead thereof the Word *Conſidered*, in the giving of Judgment by the Court. *Prime* for Demandant, Tenant and Vouchees.

Witton, Eſq; *Demandant*; Eaſt, Gent. and Weddell, Gent. *Tenants*; Thomas Fairfax, Eſquire, *Vouchee*; of Lands in *Clementhorpe* in the County of the City of *York*: Recovery of *Eaſter* 9th *William* 3d, Roll 195. *Winford*'s Office. Entry returnable *Cro. Pur.* Summons returnable *Menſ. Paſch.* Seiſin returnable *indilatè*.

THE Court, on the Motion of Serjeant *Poole*, on the Part of *Elizabeth Fairfax* Heir of the Vouchee, ordered the Prayer of Seiſin to be amended, and the Return of the Writ of Seiſin to be perfected by the Clerk of the Return-Office, the proper Officer who makes the Return. This Writ was rightly directed to the Sheriffs of the City of *York*, but not returned in the Name of any Sheriff, tho' a miſtaken Return in the ſingular, inſtead of the plural Number, was indorſed on the Writ: The Prayer of Seiſin, and Return of the ſaid Writ, were ordered to be firſt amended, and then the Roll and Exemplification accordingly. The particular Amendments were as follow; *1ſt*, To amend the Prayer of the Writ of Seiſin, by ſtriking out *(Com.)* and inſerting *(Civit.)*; to amend the Return of the Writ of Seiſin, by ſtriking out *(mihi)* and inſerting (*nobis*); by ſtriking out *(feci)* and inſerting *(fecimus)*; by ſtriking out *(prædict.)* and inſerting (*infra ſpecificat.*) and by adding the two Sheriffs Names; to amend the Entry of the Return of the Writ of Seiſin, by ſtriking out the Words (*Thomas Pulleyne, Armiger, then Sheriff of the County of York*) and inſerting *(Ric'us Wood & Sam. Buxton, then Sheriffs of the City of York*); by ſtriking out *(ipſe)* and inſerting *(ipſi)*; by ſtriking out *(ſibi)* and inſerting *(eis)*; and by ſtriking out *(fecit)* and inſerting *(fecerunt.)*

Harriſon, Chamberlain of London, *againſt* Potter. Mich. 26 Geo. 2.

POOLE for Lord-Mayor, Aldermen and Sheriffs of *London*, moved to amend their Return of Defendant's Writ of *Ha. cor. cum cauſa*. The Subſtance of the Return was the Action between the ſaid Parties, in Debt, for the Penalty of a By-Law, brought againſt Defendant for employing a Foreigner, (no Freeman of the City,) and the Cuſtom to make By-Laws; but the Cuſtom to employ Freemen, and not Foreigners, within the City, was omitted; which laſt mentioned Cuſtom *Poole* prayed might be inſerted in the Return. *Draper* for Defendant, ſubmitted whether the Return was amendable, or not; eſpecially, as another Rule touching the granting of a *Procedendo* was pending. Rule abſolute to amend the Return.

Lord Demandant, Biſcoe Tenant, Ayles Eſquire, Vouchee. Trin. 27 & 28 Geo. 2.

RULE abſolute to amend the Recovery, by tranſpoſing the Names of Demandant and Tenant, purſuant to the Deed making a Tenant to the *Præcipe*. *Prime* and *Draper* for Demandant, Tenant and Vouchee; *Willes* for Sir *Thomas Rudge*, the Remainder Man intended to be barr'd. By the Recovery *Biſcoe* had been Demandant and *Lord* Tenant. By the Deed *Lord* was to be Demandant; and *Biſcoe* Tenant.

Law *againſt* Saliſbury, one, &c. Mich. 28 Geo. 2.

RULE abſolute to amend Bill filed, and Declaration thereon againſt an Attorney, by ſtriking out the Words [*commenced and*] next before the Word [*proſecuted*] on Payment of Coſts. *Per Cur'*: The Bill is in our Power, as an original Writ is in that of the Court of *Chancery*. *Poole* for Defendant; *Prime* for Plaintiff.

Craghill and others *Plaintiffs*; Pattinſon and Wife and Nicholſon and Wife and others *Deforciants*. Mich. 29 Geo. 2.

FINE levied in *Trinity* Term *Anno primo Georgii Regis*, was Ordered to be amended according to the Deed of Uſes, by ſtriking out [*Parochiâ*] and inſerting [*Parochiis*] inſtead thereof, and by inſerting [*et Melmerby.*] Motion made on behalf of *John Nicholſon*, who claims Title to a Meſſuage and ſeveral Lands and Hereditaments in *Melmerby* in *Cumberland*, under ſaid Fine and

Deed of Uſes, as Nephew and Heir to *John Nicholſon*, one of the Deforciants; oppoſed by *Joſeph Carleton*, who claims Title to ſuch Meſſuage, &c. (if not barred by the Fine) as Heir to *Mary* the Wife of ſaid *John Nicholſon* one of the Deforciants.

Thornley *againſt* Hughes. Hil. 29 Geo 2.

DEfendant by Leave of the Court pleaded two Pleas, Not guilty, and a Special Juſtification. On the former Plea Iſſue was join'd; to the later Plea Plaintiff replied, Defendant demurred to the Replication, and Plaintiff join'd in Demurrer; Plaintiff made up the Iſſue (awarding contingent Damages as uſual) and before Argument of the Demurrer, proceeded to Trial of the Iſſue, and obtain'd a Verdict. Defendant this Term moved for, and obtain'd a Rule to ſhew Cauſe why he ſhould not amend the later Plea on Payment of Coſts. The Court thought that the Application for the Amendment came too late, eſpecially as it appear'd, that, ~~before~~ the Trial *(viz.)* 16 *June* laſt, Defendant had applied for the ſame Amendment, and then had a Rule to ſhew Cauſe, which Rule Defendant's Agent had waived by a Note in Writing ſigned by him directed to Plaintiff's Agent. The laſt Rule to ſhew Cauſe diſcharged. *Poole* for Defendant; *Wynne* for Plaintiff.

Tyrrell *againſt* Meen Adm. Hil. 30 Geo. 2.

RULE to ſhew Cauſe why Defendant's plea being a ſpecial *Plene* Adminiſtravit, (pleaded two Terms ago) ſhould not be amended by adding a Debt due from the Inteſtate, for Rent made abſolute upon Payment of Coſts. The Amendment to be made within two Days, and Defendant to take Notice of Trial for next Aſſizes. *Poole* for Defendant; *Prime* and *Martyn* for Plaintiff.

The Maſter and Fellows of Univerſity College in Oxford *againſt* the Biſhop of Exeter and others.

In quare Impedit. *HEWITT* for Plaintiff's having Occaſion to make a long Alteration in the Declaration, moved for Leave to withdraw the Declaration already delivered, and to declare *de novo*, and obtained a Rule to ſhew Cauſe, which was afterwards diſcharged as unprecedented. He then obtained a Rule to ſhew Cauſe why Plaintiffs ſhould not have Leave to amend their Declaration, putting the Amendments into the Rule: On ſhewing Cauſe upon the laſt Rule it appearing, That the Amendments, though very long, were not Matter of new Title, but related to the ſame Title made before under Lord *Arandell*, and that the Papers were in the late Mr. Serjeant *Draper*'s Hands at the Time of his Death, who by Reaſon of Sickneſs had not finiſhed the Declaration. The Rule for the Amendment was made abſolute upon Payment of Coſts; Defendant to rejoin *gratis*, and take Notice of Trial for next Aſſizes. *Poole* for Defendant.

Palmer *againſt* Coſins, one, &c. Trin. 33 Geo. 2.

RULE made abſolute for Leave to amend the Bill filed againſt Defendant as an Attorney, by adding to the Plaintiffs Damages the Sum of 150 *l.* on Payment of Coſts. The Miſtake was through Neſcience of the Clerk. The Court is not tied up to the old Caſes; Common Senſe muſt govern. *Nares* for Plaintiff; *Wilſon* for Defendant.

Hodgſon Aſſignee of the Sheriff *againſt* Michell. Eaſter 33 Geo. 2.

UNDER Colour of a pretended Agreement by Plaintiff to ſtay Proceedings, Defendant had applied to ſtay the ſame; but the Agreement being denied, the Rule was diſcharged. Then Defendant deſired to be let in to try the Merits of the Original Action on Payment of Coſts; which was granted, adding (Plaintiff having been delayed of a Trial) That the Bail Bond ſhould ſtand as Security; Plaintiff had applied for Leave to amend his Declaration on the Bail Bond, which Defendant inſiſted by Rule of the Court was not amendable; but that is a Miſtake: There is no ſuch Rule, Declarations in Actions on Bail Bonds may be amended as well as any other Declarations. The Court perhaps may have refuſed in ſome Inſtances to grant Leave to amend Writs of *Scire facias* againſt Bail, where by ſuch Amendment the Bail might be deprived of the Advantage of ſurrendering the Principal, as perhaps they might do in Caſe of a faulty *Scire facias* quaſhed, and a new one ſued out. *Poole* and *Hewit* for Defendant; *Nares* and *Davy* for Plaintiff.

Arreſt.

Johannet *againſt* Lloyd. Hil. 12 Geo. 2.

DEfendant being arreſted in returning from Attendance on the Court to juſtify his Bail, was ordered to be diſcharged. *Wynne* for Defendant.

Attachment.

Hanſlow and Wife *againſt* Roberts and others. Mich. 7 Geo. 2.

A Motion was made by *Chapple* for an Attachment againſt *Conſtable* for acting as an Attorney without being ſworn: The Court denied to make any Rule, a Penalty of 50 *l.* being laid upon Defendant by Act of Parliament.

Barton *againſt* Baynes.

DArnall moved to make a Rule abſolute for an Attachment againſt one *Bridgwater*, an Attorney, for not delivering to his Client Indentures of a Fine, *&c.* purſuant to Mr. Juſtice *Forteſcue*'s Order, (which had been made a Rule of Court.) *Per Cur'*: No Demand of the Writings appears ſince the Judge's Order made a Rule of Court; and therefore take a Rule that a

Demand of the Writings left at the Chambers of *Bridgwater* (who concealed himſelf) ſhall be a good Demand.

Gage *againſt* Gough. Eaſter 7 Geo. 2.

MOVED by *Baynes* for an Attachment againſt a Witneſs ſerved with a *Subpœna*, that did not bring a Will with him to the Trial, which he had Notice to produce. *Per Cur'*: As there was no Rule upon the Regiſter (the Witneſs) to produce the Will at the Trial, no Rule can be made on this Motion.

Miller *againſt* Vicaridge. Trin. 7 & 8 Geo. 2.

A Rule was made for an Attachment againſt the Sheriff of *Middleſex* for not returning a *Capias ad Reſpondendum*; whereupon the Sheriff cauſed Bail to be put in, and juſtified in Court, and moved to diſcharge the Rule for an Attachment upon Payment of Coſts; the Court made a Rule to ſhew Cauſe, which was afterwards diſcharged upon hearing Counſel on both Sides; it appearing that the Parties had been before Mr. Juſtice *Forteſcue*, who had made an Order by Conſent, that Proceedings ſhould be ſtayed on Payment of Debt and Coſts to be taxed, and that the Plaintiff had been delayed two Terms; and the Counſel for the Sheriff refuſing to Conſent to go before the Prothonotary on the Foot of the Judge's Order, the Court were of Opinion that the Rule for an Attachment ought to ſtand. *Corbet* for Plaintiff; *Chapple* for the Sheriff.

Hammond *againſt* Woolmer.

CAUSE tried at *Niſi prius*; Verdict for Plaintiff, ſubject to the Opinion of the Chief Juſtice, who ordered the Cauſe to be put in the Paper, and if Judgment for Defendant, Coſts of a Nonſuit; on the Argument, *Per Cur'* for Defendant, before which Defendant died; moved by his Executor for an Attachment for Non-payment of Coſts. Shew Cauſe.

Gale *againſt* Chapman. Mich. 8 Geo. 2.

A Rule was made in *Hilary*, ſixth of his preſent Majeſty, for an Attachment againſt the Plaintiff, unleſs he ſhould pay a Sum of Money upon Notice of the Rule. The Money not being paid upon Service, *Goſwell*, Defendant's Attorney, without farther Application to the Court to make the Rule abſolute, took out an Attachment againſt Plaintiff. *Skinner*, on Defendant's Behalf, moved for an Attachment againſt *Goſwell* for ſuing out the Attachment againſt Plaintiff irregularly. A Rule was made to ſhew Cauſe; but upon ſhewing Cauſe, though the Attachment againſt Plaintiff was irregularly iſſued, yet it appeared to be only a mere Miſtake in Judgment, and that no Miſchief was intended; and further, that it was meant as a Service to Defendant, *Goſwell*'s Client, who now makes the Complaint. The Rule was diſcharged. *Comyns* for *Goſwell*.

Parr *againſt* Soames. Hil. 8 Geo. 2.

THomas Hilton, one of the Jury-men, attended in Perſon, according to a former Rule of Court, but had made no Affidavit in Anſwer to the Charge againſt him. *Per Cur'*: He cannot be examined *viva voce*; therefore let there be a Rule to ſhew Cauſe why an Attachment ſhould not iſſue againſt him.

Cooper *againſt* Sayer. Eaſter 8 Geo. 2.

WYNNE moved for an Attachment againſt one *Hodſon*, for acting as Plaintiff's Attorney after he was forejudged. The Court made a Rule to ſhew Cauſe, which was afterwards made abſolute, no Cauſe being ſhewn.

Walton *againſt* Maſon.

A Rule was made that *A. B.* late Sheriff of the County of *York*, upon Notice of the Rule to him or his Under-Sheriff given, ſhould pay a Sum of Money to Plaintiff; and upon an Affidavit of Service of the Rule upon *Bowes*, the Under-Sheriff, an Attachment was granted : *Eyre* moved to diſcharge the Rule which was drawn up for an Attachment againſt the Under-Sheriff. *Per Cur'* : The Rule is wrong, though the Under-Sheriff was ſerved with the firſt Rule, this Rule muſt be for an Attachment againſt the Sheriff : and for the future, let the Form of all Rules upon Sheriffs be, that the Sheriff ſhall do the Act required, upon Notice to his Under-Sheriff, as *in Banco Regis*.

Cave *againſt* Price, Trin. 8 & 9 Geo. 2.

WRIGHT moved for an Attachment againſt the Sheriff of *Middleſex* for not returning a Writ of *Capias ad reſpondendum*, upon Affidavit of Service of the Rule on the Under-Sheriff : *Per Cur'*, Be it ſo, the Attachment muſt be againſt the Sheriff, and the Service is proper upon the Under-Sheriff.

Arne *againſt* Neeler. Mich. 9 Geo. 2.

THE Court granted a Rule for an Attachment againſt the Sheriff of *Middleſex*, for not returning a Writ purſuant to a peremptory Rule, upon an Affidavit of Service of ſuch Rule on *Benſon*, who was ſworn to act as Under-Sheriff, and not to be Under-Sheriff. *Eyre* for Plaintiff.

Ware, an Attorney, *againſt* Racket. Hil. 9 Geo. 2.

PLaintiff ſued out an Attachment of Privilege, and indorſed it for Bail without filing any Affidavit of his Debt to warrant ſuch Indorſement. Defendant complained of this to the Court, who made a Rule upon Plaintiff to ſhew Cauſe why an Attachment of Contempt ſhould not iſſue againſt him : It appeared, upon ſhewing Cauſe, that an Affidavit of the Debt was actually made before the Writ ſued out, but by Miſtake was not filed. The Court diſcharged the Rule for an Attachment, and ordered Plaintiff to pay Coſts, Defendant conſenting to bring no Action. *Belfield* for Defendant ; *Chapple* and *Glyde* for Plaintiff.

The King *againſt* Harries.

THE Attachment of Contempt was returnable the Day before the Term; *Chapple* moved to quaſh it, objecting that it ought to be returnable at a Day certain in full Term, and cannot properly be made returnable on any other Day: Where the Proceeding is by Original, the Party may appear on the Eſſoin-Day, or any of the three Days next following; but this Proceſs muſt be returnable on a Day certain; and no Inſtance can be ſhewn in the *King's Bench* or *Common Pleas*, where ſuch a Writ was returnable at a Day intervening the Eſſoin-Day and the firſt Day of the Term. *Wright* for the Proſecutor urged, That all Judgments relate to the Eſſoin-Day; and this is a judicial Writ; the Court is never adjourned on the Eſſoin-Day, but commences then and continues to the *Quarto die poſt*. The Writ was ordered to be quaſhed.

Webſter, an Attorney, *againſt* Holme. Mich. 10 Geo. 2.

AN Attachment of Contempt was ordered againſt Plaintiff for inſerting Defendant's Name in a Writ of Privilege, after it came to Plaintiff's Hands under Seal of the Court. This is ſuch a Miſbehaviour in an Attorney as the Court muſt puniſh, without putting the Party injured to prefer an Indictment for Forgery. *Eyre* for Defendant; *Chapple* for Plaintiff.

Townſend *againſt* Baker.

DEfendant's Goods, which had been taken in Execution, were, by Rule of Court made on hearing Counſel on both Sides, ordered to be reſtored; Defendant afterwards, upon Affidavit that the Goods were not reſtored purſuant to the Rule, moved for an Attachment of Contempt, which was granted abſolutely without Affidavit of Service of the former Rule, which being made by Conſent, Plaintiff muſt take Notice of, and comply with at his Peril. *Chapple* for Defendant; *Eyre* for Plaintiff.

Langdell *againſt* Sutton. Hil. 10 Geo. 2.

AN Attachment was ordered againſt the Jurors for determining their Verdict by huſtling Half-pence in a Hat; one of them had diſcovered the Matter, and ſworn it; the Eleven others denied it upon Oath; but it was proved that four of them had confeſſed it. *Eyre* moved, that Proceedings on Attachment might be ſtaid on Payment of Coſts to both Parties, without the Attendance of the Jurors in Court, who lived in *Yorkſhire*; and alledged, that only one of the Jurors attended in a like Caſe of *Parr* and *Soames*. *Per Cur'*: Let the Jurors all attend to be publickly admoniſhed, that the Country may take Warning. *Chapple* for Defendant.

Shipway *againſt* Clark. Mich. 11 Geo. 2.

DEfendant petitioned againſt Sheriff's Officers for Extortion, *&c.* praying Relief according to Statute 2 *Geo.* 2. and the Court made a Rule for the Bailiffs to ſhew Cauſe why an Attachment ſhould not be iſſued againſt them, and not to anſwer the Matters complained of; the former having been the Method conſtantly uſed here, and the later againſt the Courſe of the Court. *Belfield* for Defendant.

Maurice, Eſq; *againſt* Griffith. Hil. 12 Geo. 2.

MOTION for an Attachment againſt the Sheriff of *Merionethſhire* for not returning *Teſt' Ca. Sa*, Shew Cauſe. *Skinner*.

Macleed *againſt* Marſden. Trin. 13 Geo. 2.

THE Queſtion was, Whether a Rule to bring in Defendant's Body after *Cepi Corpus* returned by the Sheriff of *Cheſhire*, ought to be diſcharged or not? It being ſuggeſted on Behalf of the Sheriff that Defendant was in Cuſtody, and had remained in Gaol ever ſince the Arreſt; but the Fact appeared otherwiſe, Defendant had been ſuffered to eſcape. *Per Cur'*:

Had the Sheriff ſhewn Defendant to be in actual Cuſtody, the Rule ought to be diſcharged; but as there is an Eſcape, the Rule ſhould be obeyed, otherwiſe an Attachment muſt be granted. By Conſent, Debt and Coſts to be paid in a Month, with five Pounds for Coſts of the Motions. *Prime* and *Hayward* for Sheriff; *Eyre* for Plaintiff.

Huffe *againſt* Fowke.

A*GAR* for Plaintiff moved for an Attachment againſt Mrs. *Wright* for not attending as a Witneſs at the Sitting after laſt Term in *Middleſex*, ſhe having been regularly ſerved with a *Subpœna*. The Court denied to make any Rule; it is never granted here: Plaintiff may bring his Action upon Stat. 5 *Eliz. cap.* 9. *ſect.* 12.

Stephenſon *againſt* Brookes. Trin. 13 & 14 Geo. 2.

[*Wyat* againſt *Winkworth*, *Eaſter* 1 *Geo.* 2. *B. R.* *Hammond* againſt *Stewart*, *Mich.* 8 *G. B. R.* *Hopkins* againſt *Purſer*, *Trin.* 2 *&* 3 *Geo.* 2. *B. R.* *Dallyſon* againſt *Allen*, *Mich.* 10 *Geo. in Scaccario.*]

PLaintiff had obtained a Rule for one *Hall* of *Kingſton* upon *Hull*, an Officer of the Cuſtoms, to ſhew Cauſe why an Attachment ſhould not be iſſued againſt him, for not attending at *Guildhall*, *London*, to give Evidence, after having been ſerved with a *Subpœna*; Plaintiff having been nonſuited by Reaſon thereof. It appeared, that five Guineas were tendered *Hall* for his Expences, but he being a fat unweildy Man, and not able to travel on Horſeback, inſiſted upon ten Guineas, and offered, upon Receipt thereof, to undertake the Journey by Coach. *Per Cur'*: There is not any Precedent produced of a Rule of this Court for ſuch an Attachment, but the Party aggrieved has always here been put to his Action upon the Stat. 5 *Eliz. cap.* 9. Where ſufficient Amends are tendered, and a Witneſs obſtinately refuſes to attend, or is corrupted, the Court of King's Bench have, and there would be great Reaſon for this Court to interpoſe. The Sum tendered muſt be according to the Countenance and Calling of the Witneſs: Five Guineas were not ſufficient, and *Hall* had not Aſſurance that the Reſidue would be paid; if, after *Hall*'s Arrival at *London*, Plaintiff had not thought fit to examine him, the Court would not have ordered Payment of more Money. Ten Guineas do not ſeem to be an unreaſonable Demand. The Rule was diſcharged. *Draper* for *Hall*; *Prime* for Plaintiff.

George *againſt* Evans. Eaſter 16 G. 2.

ADminiſtrator of Defendant demands of Plaintiff Coſts accrued in Defendant Inteſtate's Life-time, ſhewing Letters of Adminiſtration. An Attachment granted for Non-payment. *Skinner* for Plaintiff; *Bootle* Defendant's Adminiſtrator.

The King *againſt* Lever, High Bailiff of Weſtminſter, on the Proſecution of Iſaac Tallon *againſt* Waldron. Eaſter 16 Geo. 2.

AN Attachment of Contempt iſſued forth againſt Defendant, for not bringing *Waldron*'s Body into Court, purſuant to a peremptory Rule; and Defendant having been examined upon Interrogatories, it was referred to the Prothonotary (as uſual) to examine whether he had cleared himſelf of the Contempt, or not. The Prothonotary reported the Matter ſpecially; and the Fact appeared to the Court to be, That *Waldron* being confined in the *Gatehouſe* Priſon, *Weſtminſter*, for a Criminal Matter, was, by Leave of a Judge, charged there with a Bailable Action, in the following Manner: A *Capias ad reſpondendum* was directed to the Sheriff of *Middleſex*, who made a *Mandate* to the High Bailiff of *Weſtminſter*, and Defendant was charged in Cuſtody therewith, and afterwards eſcaped from the Keeper of the *Gatehouſe*, which is the Priſon for the Liberty of *Weſtminſter*, to which Priſon the High Bailiff is obliged to carry his Priſoners within twenty-four Hours after Arreſt. The High Bailiff being called upon for a Return of the *Mandate*, returned *Cepi Corpus*, and that *Waldron* remained in the Cuſtody of the Keeper of the *Gatehouſe*. Both the Chief Bailiff and the Keeper of the *Gatehouſe* are appointed by, and hold their Places under, the Dean and Chapter of *Weſtminſter*, and both give Security to the Dean and Chapter; but the Keeper gives no Security to the High Bailiff.——The Court were of Opinion, that the High Bailiff had cleared himſelf of the Contempt, and ordered the Attachment to be diſcharged. The High Bailiff did every Thing in his Power to ſecure the Priſoner, and ought not to be criminally puniſhed. *Reſpondeat Superior* extends to Civil Matters only. The Proſecutor may bring his Action for the Eſcape. *Draper* and *Ketelbey* for the Proſecutor; *Bootle* for Defendant.

Vaughan, one, &c. *againſt* Sawyer. Trin. 19 & 20 Geo. 2.

RULE made for an Attachment of Contempt againſt the Bailiff of the Liberty of *Holderneſs* in the County of *York*, for not returning a *Mandate* made by the Sheriff, on an Attachment of Privilege, purſuant to a peremptory Rule to return the ſame, within ſix Days Notice, without any Return of a *Mandavi Ballivo*, antecedent to the ſaid peremptory Rule; on an Affidavit of Service of that Rule, and an Affidavit of ſearching the Sheriff's Office, after the Expiration of the ſix Days, and that the *Mandate* was not returned; all the Officers preſent reporting this to be the Practice. *Bootle* for Plaintiff.

Richardſon *againſt* Baily. Mich. 23 Geo. 2.

THE Under-Sheriff of *Hampſhire* ſhut himſelf up, and could not be perſonally ſerved with a Rule to Return the Writ of *Capias ad reſpondendum*. Rule, that leaving a Copy at his Houſe ſhall be good Service. *Poole* for Plaintiff.

Brodie *againſt* Tickell. Hil. 24 Geo. 2.

AFTER a Nonſuit, Motion by Plaintiff againſt *John Gray*, Eſq; for an Attachment for not attending as a Witneſs at the Sittings at *Niſi prius*. It did not appear that a *Subpœna* was perſonally ſerved; but Notice by Receipt of a *Subpœna* Ticket was admitted by Mr. *Gray*, who on Plaintiff's Application, before the *Subpœna* Ticket left at his Lodgings, had informed Plaintiff that he knew nothing of the Matter in Queſtion between the Parties, and could not give any Teſtimony for Plaintiff's Advantage. Mr. *Gray* for this Reaſon, in his Affidavit, endeavoured to excuſe his Non-attendance, and ſaid, that he would have attended the Trial notwithſtanding he could not give any material Evidence, had he not been hindered by other urgent Buſineſs. The Court enlarged the Rule for Mr. *Gray* to ſhew Cauſe why an Attachment, till after a new Trial had; and declared, that in ſome Caſes they will grant Attachments againſt Witneſſes for not attending Trials, tho' hitherto the ſame has not been done. *Prime* for Plaintiff; *Willes* for *Gray*.

Friend *againſt* Hope. Trin. 25 & 26 Geo. 2.

PLaintiff obtained a Rule for *John Hunt*, an Officer to the Sheriff of *Middleſex*, to ſhew Cauſe why an Attachment ſhould not be iſſued againſt him, for not attending the Trial at *Niſi prius* as a Witneſs on Plaintiff's Part, for Want whereof, Plaintiff made Affidavit that his Damages were leſſened, 16 *l.* But on ſhewing Cauſe, the *Subpœna* to teſtify did not appear to have been regularly ſerved; for which Reaſon the Rule was diſcharged without Coſts. *Willes* for Plaintiff; *Prime* for *Hunt*.

Attornies, Warrants of Attorney, &c.

Clarke, an Attorney, *againſt* Stone. Eaſter 6 Geo. 2.

For Fees, *&c.* THE Court, upon reading the Acts of Parliament relating to Attornies and Solicitors, 3 *Jac.* 1 and 2 *Geo.* 2. made a Rule that Plaintiff ſhould ſhew Cauſe why all Proceedings ſhould not be ſtayed till he delivered Defendant a Bill of Coſts.

Walton *againſt* Stanton. Mich. 7 Geo. 2.

DEfendant, after having been two Years in Cuſtody in Execution at Plaintiff's Suit, moved to be diſcharged upon Pretence that this Warrant of Attorney to confeſs Judgment was executed at a Time when no Attorney was preſent, and obtained a Rule, *Niſi*. Plaintiff ſhewed for Cauſe that Defendant *Stanton* himſelf practiſed as an Attorney. Rule diſcharged. *Darnall* for Plaintiff; *Comyns* for Defendant. *Per Capital' Juſtic'*, *aliter*, Where Plaintiff is an Attorney, he would then be more likely to impoſe upon Defendant.

Hil. 7 Geo. 2.

SEymour Richmond, an Attorney of this Court, having been elected a Bailiff of *Abingdon* in *Berkſhire*, obtained a Writ of Privilege to excuſe him from ſerving that Office. *Baynes* moved on Behalf of the Corporation, that the Writ of Privilege might be ſet aſide upon Affidavits that *Richmond* was a Member of the Corporation, and had ſerved ſeveral Offices there; and had taken an Oath to conform to the Orders of the Corporation. *Per Cur'*: This is not a proper Manner of diſputing the Validity of the Writ; the Court will not adviſe the Corporation how they are to act with regard to paying Obedience to it, they muſt act at their Peril. No Rule.

Collins *againſt* Griffin. Trin. 7 & 8 Geo. 2.

COURT was moved againſt *Phelps*, Defendant's Attorney, for not acquainting Defendant that he had received Notice of Trial, whereby Plaintiff obtained a Verdict without Defence. It appeared upon ſhewing Cauſe, that this Omiſſion was entirely owing to the Neglect of Mr. *Buckle*, Agent for *Phelps*: But the Court held that to be no Defence for *Phelps*, he is anſwerable to his Client, his Agent to him; the Party in this Caſe ought not to be put to his Action, but the Matter ſhould be determined in a Summary Way. Let an Attachment go againſt *Phelps*.

Mich. 8 Geo. 2. November 13.

MR. *Thomas Allen*, an Attorney of the *King's Bench*, applied in the *Treaſury* to be admitted an Attorney of this Court without Stampts; but upon looking into the Acts of Parliament, wherein no Proviſion is made for an Attorney of one Court to be admitted an Attorney of another without Duty, though there is a Proviſion for Solicitors of one Court of Equity to be admitted in other Courts of Equity, and for Attornies to be admitted Solicitors, and Solicitors admitted Attornies, without Duty, the Judges refuſed to admit him without Payment of the Duty.

Biſhop, Executrix, *againſt* Huggins. Hill. 8 Geo. 2.

PLaintiff's Teſtator recovered an interlocutory Judgment againſt Defendant, and died before the Execution of a Writ of Inquiry. The Judgment was revived by Plaintiff as Executrix, and a Writ of Inquiry was executed before Lord Chief Juſtice at Sittings; when Defendant agreed to pay Plaintiff 420*l.* for Damages and Coſts: This Sum was paid into the Hands of Mr. *Boſon*, Plaintiff's Attorney, who alſo had been concerned for Teſtator in this and other Cauſes. *Boſon* paid Plaintiff 220*l.* and kept the remaining 200*l.* giving Plaintiff a Note to account for the Surplus, if any ſhould appear, after Payment of his Bills of Coſts. Plaintiff afterwards employed another Attorney, and applied to the Court againſt *Boſon*, that he might pay the 200*l.* to her, deducting only ſuch Coſts as were due from her ſince the Time of her Huſband's Death, when ſhe became Plaintiff, and employed *Boſon*, and obtained a Rule to ſhew Cauſe, which was diſcharged on hearing Counſel on both Sides; the Court being of Opinion that they ought not to interpoſe in this Caſe; but Plaintiff may bring her Action againſt *Boſon*, if ſhe thinks fit. *Eyre* for Plaintiff; *Chapple* and *Skinner* for *Boſon*.

Hill. 9 Geo. 2.

ONE *Barnes*, an Attorney in *Cumberland*, had Orders from a Defendant to plead for him; and he ſent Directions to Mr. *Eadnell*, his Agent, ſo to do; but *Eadnell* neglecting to plead, Judgment paſſed againſt Defendant by Default. Defendant moved againſt *Barnes*, and a Rule was made upon him to ſhew Cauſe why he ſhould not make Defendant Satisfaction, he being anſwerable for his Agent's Default. Upon ſhewing Cauſe, it appeared there was a juſt Debt due to Plaintiff of 44 *l.* and the Coſts, (had a Plea been pleaded,) would have been greatly increaſed, ſo that Defendant is benefited, and not prejudiced by ſuffering Judgment to go by Default. If Defendant could have made a juſt Defence, and no Debt had been due, in caſe of a groſs and wilful Neglect, the Court would have puniſhed the Attorney; but there's no Reaſon for it in this Caſe. Rule diſcharged. *Chaple* for Defendant; *Birch* for *Barnes*.

Roe *againſt* Doe. Mich. 10 Geo. 2.

In Ejectment on the Demiſe of Cooke.

A Motion was made on Behalf of the Tenant in Poſſeſſion againſt *Davis*, an Attorney, for appearing and pleading for him without Authority. It appeared that the Tenant in Poſſeſſion was Tenant at Will to Infants, by Order of whoſe Guardian *Davis* had appeared and pleaded for the Tenant, and offered the Tenant Security to indemnify him. But *per Cur'*, a Defence cannot be made for the Tenant without his Conſent: Let the Appearance and Plea be withdrawn. *Gapper* for Tenant; *Draper* for Leſſor of Plaintiff.

Mr. L.'s Caſe. Hill. 10 Geo. 2.

L. Had ſerved an Apprenticeſhip to *G.* a Scrivener in the City, and alſo a ſworn Attorney of this Court. By the Tenor of the Articles *G.* covenanted to inſtruct *L.* in the Art and Myſtery of a Scrivener; and it appearing that *G.* during the Term of five Years ſpecified in the Articles, had never practiſed as an Attorney, but acted as a Scrivener only. Application was made to Lord Chief Juſtice, and in the *Treaſury*, that *L.* might be ſworn an Attorney, which was refuſed, he not having ſerved as Clerk to an Attorney; but as Apprentice to a Scrivener.

N. B. There was formerly the ſame Determination in the Caſe of a young Man who had ſerved Mr. *Metcalfe*, an Attorney and Scrivener in *Wood-ſtreet*; *Metcalfe*, during the Term of five

Years ſpecified in the Indentures of Apprenticeſhip, practiſed in both Capacities; but the Covenant in the Articles being to inſtruct the Apprentice in the Art of a Scrivener only, the Judges refuſed to admit him as an Attorney.

Sibthorpe *againſt* Adams. Trin. 10 Geo. 2.

BOOTLE moved for Leave to enter Judgment on an old Warant of Attorney upon an Affidavit ſworn by Plaintiff, who lived in *Ireland*, before a Commiſſioner of the *Common Pleas* there, of the due Execution of the Warrant of Attorney, that the Defendant was living, and the Debt unpaid: He produced alſo an Affidavit that the Plaintiff lived in *Ireland*; but the Court refuſed to ſuffer the Plaintiff's Affidavit (ſworn as aforeſaid) to be read.

Langley *againſt* Stapleton. Trin. 10 & 11 Geo. 2.

THE Plaintiff moved for Leave to change her Attorney, and to appont Mr. *Umfrevile* inſtead of Mr. *Forreſt*: And a Rule being made to ſhew Cauſe, *Forreſt* made it appear that he had been at great Expence and Trouble, and had done his Client good Service; wherefore the Court thought it unreaſonable that another Attorney ſhould be appointed till *Forreſt*'s Bill of Coſts was ſettled and paid; and diſcharged the Rule. *Skinner* for Plaintiff; *Eyre* for *Forreſt*.

Still *againſt* Still. Mich. 11 Geo. 2.

DEfendant gave a Warrant of Attorney to enter Judgment at the Suit of Plaintiff *John Still* and one *Suſanna Still*, deceaſed. The Judges in the *Treaſury* gave Leave to enter Judgment at the ſurviving Plaintiff's Suit, upon his Affidavit of the due Execution of the Warrant of Attorney, and that the Debt was unpaid, and the Defendant alive.

Farrill *againſt* Head. Trin. 11 & 12 Geo. 2.

DEfendant being ſued as an Attorney by Bill, pleads in Abatement that he is not an Attorney. Plaintiff moved to ſet aſide the Plea, and had a Rule to ſhew Cauſe; but it appearing on ſhewing Cauſe by Certificate from the Clerk of the Warrant that the Defendant was forejudged five Years ago, and that Forejudger ſtill remains in Force, the Rule was diſcharged. *Per Cur':* Defendant is totally deprived of Privilege, pending a Forejudger. Plaintiff may reply as he pleaſes, and traverſe the Fact, which is triable by the Record, or demur if he thinks the Plea bad. The Plea is ſworn to be true, and ſeems not to be frivolous.

Butler *againſt* Pincent.

HAyward, for Plaintiff, moved for an Attachment againſt *Phelps* for acting as an Attorney, and pleading pending a Forejudger, and a Rule was made to ſhew Cauſe. The Day before Cauſe was ſhewn, *Phelps* applied to Mr. J. *Forteſcue Aland,* and obtained an Order (without Summons) to be reſtored to his Privilege (without Payment of Coſts) upon entring a common Appearance at the Parties Suit by whom he was forejudged: And it not appearing that *Phelps* had any Notice of this old dormant Forejudger obtained ſeven Years ago, the Rule was diſcharged. *Eyre* for *Phelps.*

Hayme *againſt* Hayme. Mich. 12 Geo. 2.

DRAPER moved on the uſual Affidavit (of Warrants being duly executed, and Parties living) to enter Judgment on a Warrant of Attorney thirteen Years old, and obtained an abſolute Rule. *Per Cur':* Where the Warrant is twenty Years old, or upwards, the Rule muſt be to ſhew Cauſe.

Hillier *againſt* James.

RULE to ſhew Cauſe why Plaintiff's Bill of Coſts ſhould not be taxed. Diſcharged, the whole Demand appearing to be for conveyancing Buſineſs; and Plaintiff muſt recover upon a *Quantum meruit*. *Comyns* for Plaintiff; *Draper* for Defendant.

Coppendale *againſt* Sunderland. Hil. 12 Geo. 2.

MOTION by *Agar* to enter up Judgment on an old Warrant of Attorney: Plaintiff being a Lunatick did not ſwear the Money unpaid; but another did, who had received the Intereſt upon the Bond for three Years, ever ſince Plaintiff was Lunatick. *Cur'*: Let Judgment be entred up.

Barnes *againſt* Ward. Mich. 13 Geo. 2.

RULE to ſhew Cauſe why Judgment and *Fieri Facias* ſhould not be ſet aſide, and Reſtitution, no Attorney being preſent at the Execution of the Warrant to enter Judgment whilſt Defendant was in Cuſtody. It appeared that one *Everſden* who had ſerved a Clerkſhip, (and was ſworn an Attorney ſoon after the Execution of the Warrant, and before the firſt Motion made) was preſent; but this was held inſufficient, the Rule made abſolute; and Prothonotary directed to ſettle Satisfaction as to the Goods ſold, which could not be reſtored in Specie. *Prime* for Plaintiff; *Agar* for Defendant.

On Behalf of Heaton, *an Attorney*. Mich. 14 Geo. 2.

THE Court, after hearing Council for *Heaton*, and for the Deputy-Lieutenancy who oppoſed his Motion, made the Rule abſolute for a Writ of Privilege, to excuſe *Heaton* from ſerving in the Trained-Bands of the City of *London*, the Service being perſonal.

Mr. John Moody's Caſe. Trin. 16 Geo. 2.

IN the Treaſury Chamber 22d *June*, Mr. *John Moody* of *Havant* in the County of *Southampton* had been, at his own Inſtance, ſtruck out of the Roll of Attornies, and was put into the Commiſſion of the Peace, and made a Commiſſioner of the Land-Tax. He now moved upon an Affidavit (ſetting forth his Reaſons) to be reſtored to his Privilege; which was granted, he conſenting to take no Advantage of any Action pending, if ſuch there be.

Lunn, an Attorney, *againſt* Aſcough, an Attorney. Mich. 16 Geo. 2.

DEfendant being indebted to Sir *John Wray* by Promiſſory Note, Sir *John* left the Note with *Lunn*, to put it in Suit; *Lunn* contrived to bring the Action in his own Name, as Indorſee, and arreſted *Aſcough* by Attachment of Privilege, and held him to Bail, upon an old Notion, that Privilege cannot be pleaded againſt Privilege of equal Nature. The Attachment was a *Non omittas*, without an Attachment to warrant it. *Per Cur'*: Attornies Privilege is for the Sake of the Suitors; one Attorney is not to ſue another of the ſame Court by Proceſs, but ought to do it by Bill. An Attorney of the King's Bench ought to ſue an Attorney of this Court by Bill, and an Attorney of this Court ought to ſue an Attorney of the King's Bench in like Manner. Plaintiff's Privilege ought not to draw Defendant into another Court. *Radcliffe* againſt *Bailey*, *Mich.* 14 *Geo.* 2. in *B. R.* the ſame Determination. Plaintiff and Defendant were both Attornies of that Court: (But not as to an Attorney of one Court ſuing an Attorney of another Court.)

Contra post 44.

S.C. 2. Stra. 1141.

Vincent *againſt* Willoughby, an Attorney. Eaſter 17 Geo. 2.

PEnding a Fore-judger obtained againſt Defendant by another Perſon, Plaintiff ſued him by Bill, as having Privilege of an Attorney. Defendant moved to ſet aſide the ſecond Fore-judger, inſiſting that his Privilege was ſuſpended by the firſt; and Plaintiff ought to have ſued him by Original in the common Way. Rule to ſhew Cauſe made abſolute, without Oppoſition. *Eyre* for Defendant.

Launder, an Attorney, *againſt* Cokayn. Trin. 17 & 18 Geo. 2.

HELD *per Cur'*, That an Attorney of this Court may, for a Debt *bona fide* (but not a Note colourably indorſed without Conſideration) ſue an Attorney of the King's Bench by Attachment of Privilege, and the King's Bench Attorney would not be intitled to Privilege. But where the Attornies Plaintiff and Defendant are both of the ſame Court, the Proceeding muſt be by Bill, and not by Attachment, Defendant being intitled to Privilege.

Contra ante 43.

Vilmott *againſt* Barry, Eſq; commonly called Lord Buttevant. Maguire *againſt* The Same. Mich. 20 Geo. 2.

WArrants to enter Judgments executed by Defendant when in Cuſtody, in the Preſence of Mr. *Periam*, an Attorney of the Court of King's Bench, declared by the Court to be ſufficient, though *Periam* was not an Attoney of this Court. Other Matters were complained of, and the Rule to ſhew Cauſe why the Judgment ſhould not be ſet aſide, *&c.* was enlarged till next Term. *Skinner* and *Willes* for Defendant; *Prime* for Plaintiff.

Thomſon, one, &c. *againſt* Raſh, one, &c. Hilary 20 Geo. 2.

THE Plaintiff and Defendant being both Attornies of this Court, the Proceedings by Attachment of Privilege were ſtay'd. *Prime* for Defendant; *Skinner* for Plaintiff.

Coles, Executor, *againſt* Haden. Eaſter 20 Geo. 2.

MOtion for Leave to enter Judgment at the Suit of *Coles*, the Executor, on a Warrant of Attorney, the Words whereof extended to enter Judgment at the Suit of *Coles* the Teſtator, his

Heirs, Executors or Adminiſtrators; the Court made a Rule to ſhew Cauſe, which was afterwards made abſolute, on Affidavit of Service, (no Cauſe being ſhewn). *Bootle* for *Coles*, Executor. The Serjeant quoted a Caſe in *Salkeld*, where a Warrant of Attorney to enter Judgment was given to a Feme Sole, and ſhe having married before the Judgment entered, the Court gave Leave to enter Judgment at the Suit of the Huſband and Wife.

Cockſedge, one, &c. *againſt* Rickwood.

OBjected for the Plaintiff, That the Affidavits *ex parte Def'tis* were ſworn before *J. C.* and *A. F.* as Commiſſioners who were at that Time ſworn to be Clerks or Agents to *Raſh*, Defendant's Attorney. The general Rule extends only to Attornies themſelves; thoſe Commiſſioners are not ſworn to be Agents in this Cauſe. The Objection was over-ruled. It was ſaid, but not ſworn, that they were menial Servants, which the Court ſeemed to think would have been a ſufficient Objection. *Prime* and *Willes* for Plaintiff; *Skinner* for Defendant.

Laycock, who ſurvived Kitching, *againſt* Garforth.

Eaſter 21 Geo. 2.

PRIME moved, on the common Affidavit, for Leave to enter Judgment at the Suit of *Laycock* the ſurviving Plaintiff, by Virtue of an old Warrant of Attorney to enter Judgment at the Suit of the two, and quoted a Treaſury Rule made *ſub ſilentio*, in the like Caſe, *Still* againſt *Still*, *Mich.* 11 *Geo.* 2. The Court's Opinion was, That the Power ought to be ſtrictly purſued; and that a Power to enter Judgment at the Suit of two Perſons, doth not extend to the Survivor. The Intereſt of the Surviving Plaintiff cannot be purſued againſt the Authority. The Thing prayed is *Feſtinum Remedium*, which cannot be granted contrary to the Agreement of the Parties. The original Debt will remain as before the Warrant of Attorney given. Had the Application been made laſt *Hilary* Term, the Judgment would have related to a Time when both Plaintiffs were alive, and then perhaps the Court might have given Leave to enter Judgment at the Suit of the two. The Motion was denied. Act 8 & 9 *W.* 3. out of the Caſe.

Jones *againſt* Hayman. Trin. 21 & 22 Geo. 2.

PLaintiff, after having been ſtruck off the Rolls of Attornies and Solicitors, carried on Proceedings in his own Name, alledging that he was ſtill a Solicitor, and acting in the Name of one *Vaughan*, an Attorney, purſuant to a pretended written Authority; but not being able to verify theſe Pretenſions, Rules were made abſolute to ſet aſide the Proceedings, with Coſts. *Wynne* for Defendant; *Willes* for Plaintiff.

Trim *againſt* Slater. Trin. 22 & 23 Geo. 2.

TWO Judges had been formerly applied to for an Order to tax Mr. *Butler*'s Bill, late Attorney for Defendant; the Bill, amounting to little more than 3 *l.* had been paid in Parcels, ſome Part four Years ago, the laſt about twelve Months: Both the Judges refuſed to order a Taxation. Defendant moved that the Bill might be taxed, without diſcloſing what had paſſed before, and had a Rule to ſhew Cauſe, which was now diſcharged, with Coſts. The Act of Parliament directing Taxation of Attornies Bills, ſuppoſes them unpaid; this appears to have been paid long ago. After Application to one Judge, (unleſs he had been doubtful) no Application ought to have been made to another Judge; after the Opinion of two Judges, neither of whom doubted, or directed a Motion, the Application to the Court wrong. *Agar* for Defendant; *Wynne* for *Butler*.

Whetham, Eſq; Aſſignee, *againſt* Needham and Atkins. Trin. 24 Geo. 2.

EDward *Owen*, Plaintiff's Attorney, now a Priſoner in the *Fleet* under Proceſs of Contempt from the Court of Chancery, having commenced this Action on the Bail-Bond, aſſigned ſince his Impriſonment, Defendants moved to ſet aſide the Proceedings, with Coſts, as contrary to the Statute 2 *Geo.* 2. making void the ſame; and obtained a Rule to ſhew Cauſe: But it appearing that the Original Action was commenced before *Owen*'s Impriſonment, and there being an Exception in the Statute as to carrying on Proceedings before commenced; the Court taking this under the Statute for Amendment of the Law, 4 & 5 Q. *Anne*, to be a Continuance of the Original Suit incorporated to make it effectual, diſcharged the Rule. *Wilkes* for Plaintiff and *Owen*; *Wynne* for Defendant.

Craven *againſt* Billingſley. Mich. 24 Geo. 2.

ON Complaint of one of Defendant's Bail, of his having been made liable to pay Plaintiff's Debt and Coſts, by a Proſecution on the Bail-Bond, through the Miſconduct of Mr. *Skinner*, an Attorney employed for Defendant, who had put in Bail in the Court of King's Bench, inſtead of this Court; and it not being controverted by *Skinner*'s Council for want of proper Inſtructions, that he was an Attorney of this Court, a Rule was made abſolute upon him to reimburſe the Bail; but it afterwards appearing that *Skinner* was not an Attorney of this Court, and that he never acted by himſelf, or in the Name of another Attorney, in any one Inſtance in this Cauſe in this Court, the Rule was diſcharged. *Prime* and *Poole* for *Skinner*; *Hayward* for the Bail.

November 16th 1750. *Declared* by all the Judges in the Treaſury-Chamber, That if a Warrant of Attorney to enter Judgment be above a Year old and under ten Years old, Leave to enter Judgment may be given by a Treaſury Rule; but if the Warrant be above ten Years old, the Court muſt be moved for Leave to enter Judgment. If the Warrant be under twenty Years old, the common Affidavit of due Execution of the Warrant, that the Debt is unpaid, and Parties living, is ſufficient for an abſolute Rule; but if the Warrant be above twenty Years old, the Rule muſt be to ſhew Cauſe, and ſerved on Defendant.

On the Part of Boyer and others, *againſt* John Allen, an Attorney. Eaſter 24 Geo. 2.

A Complaint having been laid before the Court againſt *Allen*, ſhewing that he had impoſed on the Judge who ordered him to be admitted, by ſwearing to a Service of five Years to an Attorney of *Newcaſtle under Lyne*, *Com. Staff.* as an articled Clerk, tho' (as ſuggeſted) he never lived at *Newcaſtle*, but conſtantly reſided at *Loughborough, Com. Leic.* where he was an Under-School-maſter, and Collector of the Window-Light Duty; a Rule was made for *Allen* to ſhew Cauſe why he ſhould not be ſtruck off the Roll of Attornies. On ſhewing Cauſe, the Complaint was fully anſwered. It appeared, that though *Allen* reſided ſometimes at *Newcaſtle*, and ſometimes at *Loughborough*, he was during his whole Clerkſhip conſtantly employed and inſtructed by his Maſter. The Rule diſcharged, with Coſts. *Hayward, Bootle* and *Poole* for *Allen*; *Prime, Willes* and *Belſield* for *Boyer* and others.

Britten, who as well, &c. *againſt* Teaſdaile. Trin. 24 & 25 Geo. 2.

THIS was an Action brought on a Penal Statute (13th *Elizabeth)* againſt Defendant, for entring a fraudulent Judgment; and the Suit being by Original and *Capias ad reſpondendum.* Defendant, who was an Attorney of this Court, *rectus in Curia,* moved to ſtay the Proceedings, inſiſting that he ought to be ſued by Bill. On ſhewing Cauſe it was urged, That this was a Proſecution for the Crown; and that Defendant, if intitled to Privilege, may plead it. But *Per Cur'*: Theſe *Qui tam* Actions are never conſidered as the King's Cauſes. In Proſecutions at the Suit of the Crown, Defendants, tho' acquitted, can have no Coſts; but in Actions *Qui tam* 'tis otherwiſe. The proceeding by Original is irregular. Rule abſolute to ſtay Proceedings. *Prime* for Defendant; *Willes* and *Agar* for Plaintiff.

Todd *againſt* Todd. Trin. 25 & 26 Geo. 2.

In Banco Regis. *RIchard Todd* executed a Warrant of Attorney, dated 8 *May* 1746, to confeſs Judgment to *John Todd* the Elder, and *John Todd* the Younger. On the Warrant of Attorney, an Agreement was indorſed, reciting that *John Todd* the Elder and *John Todd* the Younger had entered into a Bond for the Payment of a certain Sum of Money to *W. S.* which was the proper Debt of *Richard Todd*; it was therefore agreed, that the Judgment ſhould be a Security and Indemnity to *John Todd* the Elder and *John Todd* the Younger, againſt all Coſts, Charges and Damages which they might ſuſtain, on Account of the Bond which they had entered into.

John Todd the Elder died in the Year 1748, and by his Will made *John Todd* the Younger his Executor; Motion was made by Mr. *Williams* to enter up Judgment at the Suit of the ſurviving Plaintiff. The Court doubted whether it could be done, and directed him to inquire if there was any Inſtance where the like Motion had been granted; and if not, to ſpeak to it as a Point of Law; which he afterwards did: And ſubmitted, That the Difficulties which occurred in the preſent Caſe were,

1ſt, That bare Authorities muſt, by the Rules of Law, be ſtrictly purſued; which could not be done in the preſent Caſe, the Warrant of Attorney being to appear to an Action to be commenced by two Perſons, to receive a Declaration at the Suit of two Perſons, and to confeſs a Judgment in ſuch Action; which would not empower the Attorney to appear to an Action commended by one Perſon only, and to receive a Declaration at the Suit of one only, and to confeſs Judgment in ſuch Action.

2dly, That by the Death of one of the Plaintiffs the Authority is determined.

In anſwer to which, he ſubmitted,

1ſt, That where a Contract is made with two Perſons, and one dies, the Survivor ſhall have the Benefit of it. In the preſent Caſe, *John Todd* the Younger is intitled to the Benefit of this Agreement, as Survivor.

2dly, If a Joint Action is brought by two Perſons, and one dies before Interlocutory Judgment, if the Cauſe of Action ſurvives, the Action is not abated, but the Surviving Plaintiff may proceed againſt the Defendant.

This is in Caſe of Adverſary Actions, and it will hold *a fortiori* in Amicable Actions, founded upon the Agreement of the Parties.

3dly, That in the Execution of a Power of Attorney, it is ſufficient and good if it be executed in Subſtance, and according to the Intention of the Parties, though not ſtrictly and exactly according to the Letter. Feoffment on Conſideration to re-enfeoff the Huſband and Wife, and the Heirs of their Bodies; Feoffee makes a Gift in Tail accordingly, and a Letter of Attorney to make Livery; before Livery made the Huſband dies, yet the Attorney may make Livery to the Widow, and ſhe ſhall take an Eſtate in Tail according to the Gift. *Moor* 280.

Feoffment of two Acres, one of them is before demiſed for Years; a Letter of Attorney to make Livery of Seiſin of thoſe two Acres, without ſaying, ' or any Part thereof,' the Attorney may make Livery of Seiſin of that Acre only which is in Poſſeſſion, and that will be good. *Moor* 280.

Co. Lit. 52. A Letter of Attorney to deliver Seiſin to two, the Attorney may make Livery to one, in the Abſence of the other. In the preſent Caſe, the Attorney may execute this Warrant in Subſtance, and agreeable to the Intent of the Parties; the Intent of the Parties was, that this Judgment ſhould be a Security. By the Death of *Todd* the Elder, *Todd* the Younger becomes liable alone to the Payment of the whole Money due upon the Bond; he therefore ought to have the whole Benefit of the Indemnity. It never could have been the Intent of the Parties, that the Security ſhould become a Nullity, upon an Event which made the Surviving Plaintiff liable alone to the Payment of the whole Money due upon the Bond.

4thly, That if an Attorney is empowered to do an Act to two jointly, and the Benefit of that Act, when done, will ſurvive, if one dies, the Act ſhall be done to the Survivor.

Perkins, Title *Feoffment*, Sect. 192. If a Letter of Attorney be made to make Livery of Seiſin unto two, and one of them dies before Livery of Seiſin made, and the Attorney makes Livery of Seiſin, according to the Deed, unto the other Feoffee who is living, it is good to him for all the Land. In the preſent Caſe, the Attorney is empowered to do an Act to two, the Benefit of which Act, if done, would have ſurvived; and therefore the Attorney may execute that Power to the Survivor. This Caſe likewiſe ſhews, that the Death of one of the Perſons to whoſe Benefit the Power is to be executed, is not, in Point of Law, a Revocation of the Authority.

5thly, That ſuppoſing, by the Event which has happened, this Warrant of Attorney is determined, or cannot be executed agreeable to the ſtrict Rules of the Common Law; but in the preſent Caſe, it is ſubmitted, That Proceedings upon Warrants of Attorney to confeſs Judgment, are to be conſidered as Proceedings founded upon the Agreement of the Parties, and the Judgment is to be conſidered as a common Security: That in Caſes of this Sort, the Court exerciſes an Equitable Juriſdiction, in order to prevent the Party from being defeated of his Security, either by Fraud, by Accident, or Neglect.

A Power of Attorney is in its Nature revocable, though declared in the Inſtrument to be irrevocable. 8 *Coke* 82. *Vinior's* Caſe. But in the Caſe of a Warrant of Attorney to confeſs

Judgment, though the Party revokes it, yet the Court will permit the Judgment to be entered. *Odes* and *Woodward*, Lord *Raymond* 849.

A Power of Attorney determines by the Death of the Party who gives it, yet in Caſes of this Sort, the Court permits the Attorney to execute the Power after the Death of the Party. *Andrews* and *Shewell*, *Raym*. 18. The Defendant gave a Warrant of Attorney to *A. B.* to confeſs Judgment in Debt to the Plaintiff, by *Non ſum informatus*; Warrant of Attorney given at eight o'Clock in the Morning, and at ten o'Clock Defendant died: Judgment was afterwards ſigned. Defendants prayed to ſet aſide this Judgment, but reſolved, it was well obtained, it being for a juſt Debt. If a Warrant of Attorney is given in *Eaſter* Vacation, to confeſs a Judgment as of the next *Trinity* Term, and Defendant dies in *Trinity* Term, yet the Judgment may be entered up at any Time before the Eſſoin Day of *Michaelmas* Term. *Salk.* 87. *Comberbatch* 212. By the Practice of the Court, a Warrant of Attorney before the Eſſoin Day, to enter up Judgment as of the preceding Term, is good; yet there, the Judgment is conſidered as of the preceding Term, at which Time there was an Authority exiſting. Where a Judgment is confeſſed upon Terms, the Court will ſee thoſe Terms performed. *Per* Holt, *C. J.* *Salk*. 400. 1 *Shower* 91. If a Woman gives a Warrant of Attorney to confeſs Judgment, and then marries, you may file a Bill againſt Huſband and Wife, and enter up Judgment againſt both, by the Practice of the Court. Ruled upon Motion. In this Caſe, the Marriage of the Woman was, in Point of Law, a Revocation of the Power; as where a Feme Sole ſubmits to refer Matters to Arbitration, and afterwards marries, this is a Revocation of the Submiſſion. 1 *Roll. Abr*. 331.

Warrant of Attorney was given to confeſs a Judgment to a Feme Sole, who afterwards married; in this Caſe, the Court made a Rule to enter up Judgment notwithſtanding the Marriage. *Salk*. 117.

Theſe two laſt Caſes are liable to all the Objections with the preſent.

Submitted, That if a Warrant of Attorney was given to confeſs Judgment to two Executors, and one dies, the Judgment may be entered up for the Survivor.

Still againſt *Still*, *Mich*. 11 *Geo*. 2. *Notes of Caſes in Points of Practice in* C. P. *fol*. 35. Defendant gave a Warrant of Attorney to enter Judgment at the Suit of Plaintiff *John Still*, and one *Suſanna Still* ſince dead; the Judges in the Treaſury gave Leave to enter Judgment at the Suit of the ſurviving Plaintiff: But admitted, that in a ſubſequent Caſe that Court was of a different Opinion.

Eaſter 21 *Geo.* 2. *Laycock* againſt *Garforth*. Motion by Serj. *Prime* to enter up Judgment upon an old Warrant of Attorney, at the Suit of the ſurviving Plaintiff, upon the Authority of the Caſe of *Still* and *Still*; the Court denied the Rule, and were of Opinion, That the Power ought to be ſtrictly purſued; and that a Power to enter Judgment at the Suit of two Perſons, doth not extend to the Survivor. The Thing prayed is *feſtinum Remedium*, which cannot be granted contrary to the Agreement of the Parties. The original Debt will remain as before the Warrant of Attorney given. The Motion was denied, and ſaid to be not within the Statute. 8 & 9 *W*. 3.

That the firſt Reaſon in this Caſe was contrary to the Doctrine laid down in the ſeveral Authorities in *Moor*, *Co. Littleton*, *Salkeld*, *Shower* and *Perkins*. That this cannot be againſt the Agreement of the Parties, for the Reaſons before given. That the third Reaſon will not hold in the preſent Caſe, for this Judgment was only to be an Indemnity. That if the Plaintiff fails in the preſent Application, he is intirely without Remedy at Law.

The Court took Time to conſider. Afterwards Lord Chief Juſtice declared the Opinion of the Court, That a Rule ſhould be granted; and ſaid, that the Benefit of this Agreement ſurvived to the preſent Plaintiff; and that the Authority in 1 *Shower* 91. was a ſtronger Caſe than the preſent.

Mould *againſt* Jackman. Trinity 24 & 25 Geo. 2.

PLaintiff moved in the Treaſury, producing the common Affidavit, for Leave to enter Judgment on an old Warrant of Attorney, not expreſſing any Term or Time. Rule made to ſhew Cauſe, and afterwards abſolute, on Affidavit of Service; no Cauſe being offered to the contrary.

Machin *againſt* Delaval. Hil. 26. Geo. 2.

IT being found by Verdict, on Trial of a feigned Iſſue directed by the Court, That the Warrant of Attorney to enter Judgment was given in Conſequence of an Uſurious Contract; the

Court ordered the Judgment to be ſet aſide, and ſaid Warrant of Attorney, and the Bond whereon ſaid Judgment was entered, to be delivered up, and Plaintiff to pay Coſts of Application. *Prime* and *Willes* for Defendant; *Poole* for Plaintiff.

Gladwin *againſt* Scott. Eaſter 26 Geo. 2.

Defendant *Henry Scot*, and one *Thomas French* deceaſed, gave a joint Bond to Plaintiff for Payment of 127*l*. and Intereſt, and a Warrant of Attorney to enter Judgment againſt *me*, not *us*, though executed by two. *Willes* for Plaintiff moved, on the common Affidavit, for Leave to enter Judgment againſt *Scott* the Survivor. He quoted a Caſe *in Banco Regis*, *Todd* againſt *Todd*, where Leave was given to enter Judgment at the Suit of a ſurviving Plaintiff. Rule to ſhew Cauſe; which was afterwards made abſolute, on Affidavits of Service, no Cauſe being ſhewn to the contrary.

N. B. The Caſe quoted is herein before inſerted under this Title, p. 43.

Unwyn one, &c. *againſt* Robinſon. Mich. 28 Geo. 2.

BOTH Parties were Attornies of this Court; Plaintiff ſued Defendant by common *Capias*; Defendant moved to ſtay the Proceedings, inſiſting that he ought to have been ſued by Bill, and that the Affidavit to hold him to Bail was intitled, *Unwyn* one, *&c.* againſt *Robinſon* one, *&c.* which is not agreeable to the Writ. Defendant had been formerly forejudged, but was reſtored to his Privilege before this Action brought. It appeared that Defendant had obtained a Judge's Order for Time to put in Bail, but that was not deemed a ſufficient Waiver of his Objection to Plaintiff's Method of proceeding againſt him. Rule abſolute to ſtay Proceedings without Coſts. *Poole* for Defendant; *Willes* for Plaintiff.

Horſley *againſt* Shuter. Mich. 33 Geo. 2.

RULE made for Leave to enter Judgment on an old Warrant of Attorney upon Plaintiff's Affidavit *of the due Exe-*

cution of the Warrant, and that the *Debt* intended to be thereby ſecured *was unpaid*, and an Affidavit of a third Perſon: That Defendant *now reſides in Ireland, and that Deponent ſaw him at Dublin 18th September laſt* (1759) *in full Life, and ſeeming good Health*. After ſome Doubt as to the Proof of *Defendants being alive*, (the two former neceſſary Matters being fully prved). The Court thought that Proof ſufficient, Defendant reſiding in *Ireland*, 18th *September* is a reaſonable Diſtance of Time paſt. *Hayward* for Plaintiff.

Award, Submiſſion, &c.

Aſpley *againſt* Croſley. Eaſter 7 Geo. 2.

DARNAL moved, that Defendant might be diſcharged out of Cuſtody at Plaintiff's Suit. Upon the Trial of this Cauſe a Juror was withdrawn by Conſent, and all Matters in Difference between the ſaid Parties were referred to Arbitrators, who made an Award, whereby Defendant was ordered to pay a Sum of Money to Plaintiff at a future Day; Defendant's Council inſiſted, that Plaintiff's only Remedy is now upon the Award, and if there had been any Bail in the Cauſe, it would have been loſt, and therefore Defendant ought to be diſcharged out of Cuſtody. But the Court were of Opinion, that the Award is not a final, concluſive, abſolute Determination, but is liable to Exceptions, and no Proviſion being made by the Rule for Defendant's Diſcharge before Performance of the Award; and the Arbitrators not having ordered Defendant to be diſcharged, their Intention ſeemed to be, that all Things ſhould remain *in ſtatu qao* till Performance of the Award. No Rule.

Rawling *againſt* Wood. Eaſter 8 Geo. 2.

A Parol Award held good, and an Attachment granted for Non-payment of Money purſuant thereto. *Chapple* for Plaintiff; *Wynne* for Defendant.

Rudd *and* Coe. Trin. 8 & 9 Geo. 2.

SKINNER moved on Behalf of *Rudd*, that a Submiſſion between the Parties contained in the Condition of Arbitration Bonds might be made a Rule of Court, and produced the Bond executed by *Coe*. *Per Cur'* : Be it ſo, *Coe*'s Conſent is ſhewn by the Bond executed by him, and the Motion is made on Behalf of *Rudd*.

Carter *againſt* Manſbridge. Eaſter 9 Geo. 2.

WRIGHT moved to make a Submiſſion between the Parties a Rule of Court purſuant to the Statute 9 & 10 *Will.* 3. *Toller* objected, that the Agreement to make the Submiſſion a Rule of Court was no Part of the Condition of the Bond, but was thereunder written, and not ſigned; but it appearing by Affidavit that the Subſcription was made before the Execution of the Bond, it was taken by the Court to be Part of the Submiſſion, as an Indorſement by Way of Defeazance is Part of the Deed; and the Submiſſion was made a Rule of Court.

Dubois *againſt* Medlycott. Eaſter 10 Geo. 2.

CHAPPLE moved to make a Rule to ſhew Cauſe abſolute for an Attachment againſt Defendant for Non-performance of an Award. *Eyre* for Defendant offered to object to the Award in Point of Law; but the Submiſſion made a Rule of Court, being by Bond, *per* Statute 9 & 10 *Will.* 3. no Objection to the Award can be made after the firſt Term, and comes now too late. Rule abſolute.

Gatliffe *againſt* Dunn. Eaſter 11 Geo. 2.

RULE of *Niſi prius* to refer, an Award made, and Motion for an Attachment for Non-performance. *Eyre* and *Urlin* for Attachment; *Comyns* and *Wright* againſt it, who inſiſted, that the Arbitrators had not purſued their Authority, becauſe the Submiſſion confined the Award to be made in Writing indented, and the Award produced was not indented. *Cur'*: It is a perfect immaterial Objection, and juſt the ſame as if the Submiſſion had ſaid the Award ſhould be made on gilt Paper; let an Attachment go.

Harriſon *againſt* Oliver.

MOTION *per Eyre* for Attachment for Nonpayment of Money awarded under a Reference *per Regulam Cur'*. *Bootle* for Defendant ſhewed for Cauſe, that the Arbitrator, being by the Rule confined to ſtate Plaintiff's Demand only, was debarred from the Conſideration of Defendant's Demand on Plaintiff: That Defendant having brought his Action againſt Plaintiff, Plaintiff had pleaded the General Iſſue, and given Notice to ſet off his Demand under the Award. *Per Cur'*: It appears that Demand of the Money awarded was made, and Defendant in Contempt *June* 10. The Notice to ſet off was not till *June* 24. If Defendant pays the Money, it cannot be ſet off. Plaintiff refuſing to Conſent to a Reference to Prothonotary, Rule was made abſolute for Attachment, but ordered to ſtay a Month in the Officer's Hands.

Stephenſon *againſt* Browning. Eaſter 12 Geo. 2.

WRIGHT came to ſhew Cauſe againſt an Attachment for Non-performance of an Award, and objected, *Firſt*, That though the Award be proved executed, it does not appear when. *Secondly*, That the Coſts ordered to be paid by Plaintiff were taxed by Prothonotary *Thomſon*, who is not named in the Award. And *Thirdly*. That no Releaſe is awarded. *Eyre* for Defendant anſwered, that as there is no Affidavit to induce Suſpicion, the Execution of the Award is ſufficiently proved, that reaſonable Coſts of Suit are awarded to be paid, and though the Prothonotary be not named, he his the proper Perſon to tax thoſe Coſts; and that all Actions are by the Award directed to ceaſe, which is an effectual Releaſe. The Court thought the Objections ſufficiently anſwered, and would have made the Rule abſolute. But by Conſent Plaintiff was ordered to pay 40 *l.* 3 *s.* being the Coſts taxed, within two Months. It was ſaid by the Court, that where the Objections ariſe upon the Face of the Award, they may be made at any Time; but where the Party complains of Corruption or ill Practice, he muſt do it within the ſecond Term.

Note; It was obſerved by Lord Chief Juſtice, that though the Coſts are awarded to be paid *January* 1. it appears they were not taxed till *January* 30.

Dalling *againſt* Matchett. Mich. 14 Geo. 2.

MATTERS in Difference were, by Conſent of Parties, referred to three Arbitrators, ſo as they, or any two of them, make an Award, *&c.* and an Award having been made by two in Plaintiff's Favour, Defendant moved to ſet it aſide; objecting, that two had not a Juriſdiction without the third; and obtainted a Rule to ſhew Cauſe. Upon ſhewing Cauſe it appeared, that the third Arbitrator had ſufficient Notice of the Meetings of the other two, and might have been preſent if he would. *Per Cur'*: 'Tis agreed by both Sides, that if the third had met, two might have made an Award; two have a Juriſdiction, but muſt meet purſuant to Rules of Law. If the third had been preſent, his Reaſons might have altered the Opinion of the other two; he is not therefore to be excluded by Fraud; nor are the two to act, without the third's having an Opportunity to be preſent; but where the third has ſufficient Notice, as in this Caſe, and will not attend, the Meeting of the two is regular, and their Authority ſufficient. The Rule diſcharged. *Skinner* and *Prime* for Plaintiff; *Belfield* and *Urlin* for Defendant,

Kettle *againſt* Grove, Heir, &c. Eaſter 15 Geo. 2.

On Bond. AT the Aſſizes Plaintiff had a Verdict for his Security, and Matters in Difference were referred to Arbitrators by Rule, who made an Award within the Time limited, whereby Defendant was ordered to pay Plaintiff 300*l*. The Rule of Aſſizes was made a Rule of Court. And Plaintiff electing to proceed upon the Verdict, and not by Attachment of Contempt for Non-perfomance of the Award, moved for Leave to enter Judgment, and take out Execution for the Money awarded;

ed; and a Rule was made to ſhew Cauſe, and afterwards abſolute, on Affidavit of Service.

Note; The Court thought this a proper Application; and that Plaintiff had not a Right to enter Judgment without Leave of the Court. *Birch* for Plaintiff.

Tynte *againſt* Every.

ARbitrators awarded Coſts of Suit and of the Reference, to be taxed *per* Prothonotary. The Court ordered Coſts to be taxed to the Time of the Reference, but not after. *Gapper* for Defendant; *Draper* for Plaintiff.

Eaſter 16 Geo. 2.

UPON the Motion of Serjeant *Birch*, the Court made a Rule that *A. B.* a ſubſcribing Witneſs to an Arbitration-Bond, ſhould ſhew Cauſe why he ſhould not make an Affidavit touching the Execution of that Bond; and upon an Affidavit of Service, the Rule was made abſolute.

Note; This is the only Caſe wherein the Court interpoſed in this Manner.

Read *againſt* Garnett, an Attorney. Trin. 17 & 18 Geo. 2.

VERDICT for Plaintiff, for Security. Reference, by Rule, to three of the Jurors; Award in Plaintiff's Favour. Rule obtained by Plaintiff for Defendant to ſhew Cauſe why *Poſtea* ſhould not be delivered to Plaintiff, to take out Execution for the Money awarded. Objection by Defendant, That no Affidavit was produced of the due Execution of the Award, or of a Demand of the Money; which the Court held to be as neceſſary as if the Motion had been for an Attachment for Non-payment of Money. The Rule was diſcharged. *Skinner* for Plaintiff; *Willes* for Defendant.

Bail and Bail-Bonds, and Surrenders in Diſcharge of Bail.

Faget *againſt* Vanthiennen. Mich. 6 Geo. 2.

REcognizance of Bail was ordered to be amended by making it in an Action of Treſpaſs and Aſſault *ad dampnum* 2000 *l.* inſtead of 200 *l.* *ſuper aſſumptionem*. Two Actions were depending between the Parties, and Bail was put in to the Action *ſuper aſſumptionem* before the Bail now amended was put in, which was intended to be in the Action of Aſſault, but by Miſtake of the Filazar was taken in the other Action, contrary to the Inſtructions given.

Wiſe *againſt* Lawrence and others. Hil. 6 Geo. 2.

DEfendants were taken on a *Capias in Withernam* after an *Elongata* returned on a *Pluries*; a *Capias* and *Alias* to warrant the *Pluries* appeared to be filed with the Filazar, but not returned; for want of which a Motion was made to diſcharge the Defendants, and the Court granted a Rule to ſhew Cauſe; but afterwards upon ſhewing Cauſe, it appearing to be the conſtant Practice to ſue out the *Capias Alias* and *Pluries* all at the ſame Time, the Rule was diſcharged; and thereupon Defendants moved to be bailed, and were told by the Court, the Plaintiff muſt firſt declare, and the Defendants plead *Non ceper'*; which being done, the Defendants were admitted to Bail. The Bail were bound in the Penalty of 200 *l.* each upon their Goods, *&c.* to be levied to the Uſe of the Plaintiff and *S.* his Wife, upon Condition that the Defendants ſhall appear *de die in diem* in this Court; and if Judgment be given againſt the Defendants, that the ſaid Defendants render their Bodies in *Withernam* to remain in Cuſtody until they render *S.* the Wife of the Plaintiff, and permit her to go at large.

Haward *againſt* Nalder.

MOTION was made that a common Appearance might be accepted in this Cauſe for Defendant, the Affidavit to hold him to Bail having been ſworn before Plaintiff's Attorney as a Commiſſioner; and a Rule to ſhew Cauſe was obtained, but was afterwards diſcharged; it having been hitherto the conſtant Practice for Plaintiff's Attorney to take the Affidavit to hold to Bail, Practiſers apprehending that no Action being commenced at the Time of ſwearing ſuch Affidavits, they are not within the ſame Rule as Affidavits ſworn before the Plaintiff's Attorney in Cauſes depending. It was ſaid by the Court, that this Matter would be conſidered by all the Judges at their Meeting to ſettle the Practice, upon ſome Doubts that have ariſen upon the Conſtruction of the late Acts of Parliament.

Atterbury *againſt* Ward. Eaſter 6 Geo. 2.

In Debt upon a Recognizance of Bail.

A Rule *Niſi* for Judgment for the Plaintiff upon an Iſſue of *Nul tiel Record* was diſcharged, the Record of the Recognizance produced by the Plaintiff being conditional, and the Recognizance ſet forth in the Declaration without any Condition.

Steward *againſt* Biſhop.

ONE Perſon became Bail for Defendant before a Judge, and ſurrendered him to the *Fleet* Priſon. Plaintiff after the Render proceeded to ſerve the Sheriff with a Rule to bring in the Body. And upon a Motion to ſtay the Proceedings againſt the Sheriff, a Queſtion aroſe, whether one Perſon only being Bail, the Render was effectual or not; and the Court held the Render inſufficient; and refuſed to ſtay Proceedings againſt the Sheriff, but afterwards two Bail were put in and juſtified in Court; and thereupon Proceedings againſt the Sheriff were ſtaid on Payment of Coſts. Plaintiff inſiſted that he had been delayed of a Trial, and that the Bail ought to be bound for the Debt, and were too late to Render; but the Court were of a contrary Opinion, Plaintiff having proceeded againſt the Sheriff as above-mentioned. and not upon the Bail-Bond.

Hadderweek *againſt* Catmur. Mich. 7 Geo. 2.

DEfendant was held to Bail by Lord Chief Juſtice's Order, upon Affidavits of a criminal Converſation with Plaintiff's Wife. Defendant afterwards applied to Lord Chief Juſtice, upon Affidavits of himſelf and Plaintiff's Wife, that Plaintiff having been long beyond Seas, and the Wife having had Advice of his Death, received Defendant's Addreſſes, and married him as her ſecond Huſband. Lord Chief Juſtice ordered Defendant to apply to the Court, and upon reading Affidavits and hearing Counſel on both Sides, the Chief Juſtice was of Opinion that the Order for Bail ought to be diſcharged, nothing criminal appearing in the Defendant; and in Caſes of this Kind which differ from Actions brought upon Contracts, no Bail is required, unleſs by the Special Order of a Judge, which Defendant hath a Right to apply to the Court to diſcharge, if not well founded. *Forteſcue* and *Reeve* thought that entering into the Foundation of the Order was examining the Merits of the Cauſe; and therefore improper before the Trial. Defendant was held to Bail, and had four Days Time to put in the ſame (*abſente Denton*).

Heath *againſt* Aſtley.

THE Original Action was brought againſt Defendant in *Michaelmas* Term laſt, and for Want of Bail above, the Bail-Bond was aſſigned in *February* following; afterwards Defendant died, and the Bail moved to ſtay Proceedings againſt them, the Plaintiff not having obtained Judgment upon the Bail-Bond; the Court on hearing Counſel on both Sides, ordered the Proceedings to be ſtaid upon Payment of Coſts, being of Opinion that the Matter was never carried farther than the Bail-Bond ſtanding as a Security for what ſhould be recovered upon a Trial; and if that had been the Caſe, and Defendant had died before the Trial, the Suit would have been at an End; the Plaintiff might have proceeded more ſpeedily; and if any Inconvenience happens to him, it is through his own Laches. *Chapple* for Plaintiff; *Hawkins* for Defendant.

Davenport *againſt* Wall.

THE ſame Queſtion determined in the ſame Manner; the *Capias* in the Original Action was returnable on the firſt Return of *Eaſter* Term laſt. Defendant died before *Trinity* Term. *Per Cur'*: Plaintiff might have had Judgment and *Ca. Sa.* of *Eaſter* Term laſt, if he had proceeded as he might have done. *Chapple* for Defendant; *Eyre* for Plaintiff.

Wingfield *againſt* Goodridge.

BAIL was taken in Town before a Judge, and the Bail, who lived in the Country about ten Miles diſtant from *London*, returned Home, and being afterwards excepted againſt, ſent an Affidavit of their Sufficiency: Whereupon *Eyre* moved to juſtify in Court. *Wright* objected, that the Bail being taken before a Judge in Town, they cannot juſtify by Affidavit, but muſt appear perſonally in Court. Court held the Objection good, but gave Defendant a Week to perfect his Bail, to give them an Opportunity to come to Town to juſtify.

Whalley *againſt* Martin.

DEfendant ſuperſeded three Years ſince, and arreſted again for the ſame Debt; moved to be diſcharged upon entring a common Appearance; but it appearing that one *Williams*, formerly Plaintiff's Attorney, had, after leaving a Declaration in the Office, deſerted the Cauſe, and abſconded, whereby Defendant obtained a *Superſedeas* by Surprize without Plaintiff's Knowledge, Defendant was held to Bail.

Martin *againſt* Price and others. Hil. 7 Geo. 2.

EYRE moved to ſtay Proceedings againſt the Bail in an Action of Debt brought upon the Recognizance, the Writ not having been ſerved four Days before the Return. Court made a Rule to ſhew Cauſe, which was afterwards made abſolute.

Oſmond,

Ormond, Aſſignee of the Sheriff, *againſt* Griffith.

DEfendant put in the ſame Bail before a Judge in due Time as were Bail to the Sheriff. Plaintiff excepted againſt the Bail, and for Want of Addition or Juſtification took an Aſſignment of the Bail-Bond, and proceeded thereupon. Defendant moved the Court to ſtay Proceedings upon the Bail-Bond, alledging that Plaintiff by accepting an Aſſignment thereof had admitted the Bail to be good; but the Court, upon hearing Counſel on both Sides, refuſed to ſtay the Proceedings, the Plaintiff by a late Rule of Court made in *Michaelmas* Term 6 *Geo.* 2. being at Liberty to except againſt the Bail above, although it be the ſame Bail that was taken by the Sheriff. *Chapple* for Defendant; *Eyre* for Plaintiff.

Garnett *againſt* Heaviſide.

DEfendant moved for ten Days Time to put in Bail, and that upon putting in good Bail, Payment of Coſts, Pleading the general Iſſue, and taking Notice of Trial within Term, Proceedings on the Bail-Bond might be ſtay'd. The Court made a Rule to ſhew Cauſe, which was afterwards made abſolute upon hearing Counſel on both Sides: The Caſe was, that the Plaintiff had ſued out a *Teſtat'* Attachment of Privilege from *Middleſex* into *Yorkſhire*, and Bail was taken as in a Country Cauſe, and filed with the Filazer of *Yorkſhire*, by Miſtake; and in order to give Defendant an Opportunity to rectify that Miſtake, the Rule was made.

Birch, Executor, *againſt* Douglaſs. Hil. 7 Geo. 2.

PLaintiff's Teſtator had executed a Letter of Licence to Defendant for five Years, which were not expired at the Time. Defendant was arreſted and held to Bail at Plaintiff's Suit. *Baynes* moved that Defendant might be diſcharged upon entring a common Appearance; but the Court denied the Motion, being of Opinion that entring into the Queſtion about the Letter of Licence (which could not amount to more than a Releaſe) was entring into the Merits of the Cauſe.

Low *againſt* Ravill. Eaſter 7 Geo. 2.

THE Defendant was ſurrendered by his Bail to the *King's Bench* Priſon inſtead of the *Fleet* by Miſtake; he was afterwards ſurrendered rightly, and the Bail moved to ſtay Proceedings upon the Bail-Bond: A Rule was made to ſhew Cauſe, which was afterwards diſcharged upon hearing Counſel on both Sides, the Plaintiff having been delayed of a Trial. *Eyre* for Defendant; *Hawkins* for Plaintiff.

Merrett *againſt* Montfort.

CA. Sa. againſt the Principal whereupon to found a Proceeding againſt the Bail left with the Sheriff *February* 6, returnable *February* 9, held to be a Day too ſoon, and Proceedings againſt the Bail ſtayed. *Corbet* for Defendant; *Comyns* for Plaintiff.

Waddington, Sheriff Co. Hunt, *againſt* Fitch.

IN an Action upon a Bail-Bond taken on an Attachment out of the Court of Chancery, Defendant craved *Oyer*, and pleaded the Statute 23 *Hen.* 6. That the Bond was taken for Eaſe and Favour, *&c.* to which Plaintiff demurred, and Defendant joined in Demurrer. After Argument, Judgment was given for Defendant. *Eyre* for Defendant; *Chapple* for Plaintiff. *Cooke*, *lib.* 4. *fol.* 7[illegible]. *Dyer*, *fol.* 119. The Condition of this Bond appeared to be for Defendant's Appearance before the King in his High Court of Chancery, at the Return of the Writ, to anſwer the King, as alſo all ſuch other Matters as ſhould be then and there laid to his Charge; and further to perform and abide ſuch Order as that Court ſhould direct in this Reſpect: Which is the common Form, where the Attachment iſſues for want of Appearance or Anſwer; ſo that if Plaintiff, inſtead of demurring, had replied a Bill filed in Chancery, Proceſs of *Subpœna*, *&c.* and that the Attachment iſſued for want of Appearance or Anſwer, agreeable to the Fact, probably he might have maintained his Action. *Vide* the Caſe following:

Debt on Bail-Bond for the Appearance of one *Mugg coram Juſtic', &c. apud Weſtm', &c. ad reſpondend' dicto Domino Regi de &*

ſuper hijs quæ eidem Mugg *adtunc & ibidem objicientur, & ulterius ad faciend' & recipiend' quod Cur' dicti Domini Regis de eo Cons' in hac parte.*

On pleading the Statute 23 *H.* 6. *quod fuit Capt' pro Eaſiamento, &c.* And on a general Demurrer after Argument *Trin.* 2 *Geo.* 1. and *Hil.* 3 *Geo.* 1. in *Mich.* 4 *Geo.* 1. the Court gave Judgment that the Bond was void.

And differed this Caſe from an Attachment in Proceſs out of Chancery, (which was ſtrongly urged by the Plaintiff's Counſel) for that is no more than a Proceſs to compel the Party to appear and anſwer, *&c.*

And this Judgment was given *Mich.* 4 *Geo.* 2. *C. B. Field, Vic'* v. *Watford,* one of the Obligors with *Mugg,* the Principal in the Obligation.

Cook and others *againſt* Sankey. Trin. 7 & 8 Geo. 2.

DARNALL moved, that a common Appearance might be accepted for Defendant, and produced a Copy of the Plaintiff's Affidavit made to hold the Defendant to Bail; whereby the Action appeared to be for entring Plaintiff's Ground, and taking away and ſpoiling his Hop-Poles, and treading down his Hop-Plants to the Damage of 20*l.* *Darnall* inſiſted, that Plaintiff cannot be his own Judge of the Damages either in Treſpaſs or in a Special Action upon the Caſe; and Defendant ought not to be held to Bail without a Judge's Order. *Per Cur':* The Plaintiff is the proper Perſon to ſwear to his Damages, by the Act of Parliament. No Rule.

Aucher *againſt* Hamilton.

THE Judges in the Treaſury refuſed to order a Bail-piece to be filed, twenty Days being lapſed ſince the Caption, the Words of the general Rule being, that ſuch Bail-pieces ſhall not be filed without Leave of the Court. Court was afterwards moved upon Mr. *Newſome*'s (Defendant's Agent) Affidavit, that he received the Bail-piece in due Time, but that it was omitted to be filed by his Clerk's Neglect. Court ordered the Bail-piece to be received and filed.

Maſon *againſt* Bruce.

DEfendant ſurrendred in Diſcharge of his Bail the laſt Day of laſt Term, (being the *quarto die poſt* of the Return of an Action of Debt upon the Recognizance) at Mr. Juſtice *Denton's* Chambers, after the riſing of the Court. The Filazar made a general Entry of the Surrender upon Record as done in Court. The Plaintiff moved, that the Roll might be taken off the File; and a Rule to ſhew Cauſe was made, which was afterwards made abſolute, upon hearing Counſel on both Sides; the Surrender not being *ſedente Curia* was too late. *Chapple* for Plaintiff; *Hawkins* for Defendant.

Newman *againſt* Butterworth. Hil. 8 Geo. 2.

DEfendant moved to ſtay Proceedings againſt his Bail, pending a Writ of Error. Plaintiff inſiſted, that the Bail ought to give Judgment, and that Execution only ſhould ſtay. But *per Cur'*, the Bail ought not to be precluded from ſurrendring the Principal; and therefore let all Proceedings be ſtaid pending the Writ of Error. *Comyns* for Defendant; *Skinner* for Plaintiff.

Againſt Ewer.

HAwkins moved to ſtay Proceedings in an Action upon the Recognizance againſt the Bail, the principal Defendant having been ſurrendered to the *Fleet*, and afterwards charged in Execution there by Plaintiff. *Wright* for Plaintiff objected, that Defendant had pleaded; and Plaintiff demurred; that therefore Defendant's proper Method was to procure an Amendment of his Plea; but the Court held, that Plaintiff could not proceed againſt the Bail after charging the Principal in Execution. Defendant ſhould not have pleaded, but moved the Court ſooner. Let Proceedings be ſtaid upon Payment of Coſts *ex aſſenſu*.

Cremer *againſt* Bulman.

BAIL was put in, and an Exception taken thereto. Defendant within the Time for perfecting the Bail gave Notice to add and juſtify in Court, but inſtead thereof did ſo at a Judge's Chamber, and was ſurrendered to the *Fleet*, which was held inſufficient, the Bail not being perfected, and the Rule to ſhew Cauſe why Proceedings on the Bail-Bond ſhould not be ſtaid was diſcharged upon hearing Council on both Sides. *Skinner* for Plaintiff; *Wright* for Defendant.

Fleetwood *againſt* Poictier. Eaſter 8 Geo. 2.

THIS was an Action of Covenant brought by Plaintiff Patentee of *Drury-Lane* Play-houſe againſt Defendant for not performing Dances upon the Stage according to Articles, whereby Plaintiff ſwore himſelf dampnified 100 *l.* Defendant moved in the Treaſury for a common Appearance, but did not obtain a Rule, the Plaintiff having ſworn to a certain Damage.

Harriman *againſt* Clegg.

AFfidavit of Juſtification by Bail, that they were ſeverally worth the Sum wherein they were bound by their Recognizances, after all their *Juſt* Debts paid and ſatisfied, held to be inſufficient, not being in common Form; the Word *Juſt* ought to be omitted.

Blick *againſt* Halpenn and his Wife.

THE Huſband abſconded, and could not be taken; but the Wife was arreſted by meſne Proceſs; and moved in the *Treaſury* that a common Appearance might be accepted for her, which was ordered on hearing the Attornies on both Sides: The Reaſon is, that if the Wife was to be held to Bail, it would be in the Power of the Huſband to ſet up a ſham Action againſt her, and keep her in continual Impriſonment; otherwiſe, if the

Huſband and Wife had been both taken, in that Caſe both ſhall be held till Bail be given for both: The Reaſon is, that otherwiſe a Woman might marry a Priſoner, and thereby being free from Impriſonment herſelf, defraud her Creditors. *Roll's Abr*. 583. *Smith* and *Storey*. 1 *Syd*. 393. *Cro*. *Car*. 118. *Trin*. 9 *W*. 3. *Clarkſon* againſt *Watkinſon* and Wife, in *B. R.*

Clarke *againſt* Baker.

PRoceedings were ſtayed in an Action of Debt brought upon a Recognizance of Bail, pending a Writ of Error, without Defendant's giving Judgment; becauſe thereby Defendant would be precluded from a Surrender, which is not reaſonable. *Chapple* for Plaintiff; *Comyns* for Defendant.

Knight *againſt* Winter, Bail for Smothergil.

THE Principal was rendered in Diſcharge of his Bail in due Time; and Notice thereof was given to Plaintiff's Attorney. The *Reddidit ſe* was marked in the Judge's Book, and ſigned by the Judge; but was not marked or ſigned upon the Bail-piece itſelf, which was upon an *Habeas Corpus*, and had been delivered out by the Judge's Clerk to Plaintiff's Attorney, to be filed, who did not file it, but proceeded to Judgment againſt the Bail for want of a *Reddidit ſe* being marked upon the Bail-piece. *Wright* and *Hawkins* moved for Defendant to ſet aſide the Judgment againſt the Bail, and that the Bail-piece might be filed, and the *Reddidit ſe* entered thereupon, agreeable to the Fact; and upon hearing *Eyre* and *Urlin* for Plaintiff, the Court was of Opinion that the Practice of Plaintiff's Attorney in taking away the Bail-piece from the Judge's Chamber was unwarrantable, and ſet aſide the Judgment, with Coſts (Defendant having done every Thing in his Power to make the Render effectual) Defendant conſenting to bring no Action, and ordered the Bail-piece to be filed, and the *Reddidit ſe* entered.

Young *againſt* Wood.

SKINNER moved to ſtrike out of the Bail-piece one of the Bail, another (who was ready to juſtify) being added in his ſtead. *Belſield* objected that no Affidavit was produced that the Perſon prayed to be ſtruck out, was a material Witneſs in the Cauſe, which Affidavit the Court thought neceſſary, and rejected the Motion; whereupon *Skinner* prayed that the Bail added might be ſtruck out, which was granted.

Cantrel, Adminiſtrator, *againſt* Graham.

THIS was an Action brought upon a Leaſe dated in 1727, for two Years Rent due ſince the Year 1733, when Defendant became a Bankrupt. Defendant moved for a common Appearance, and produced his Certificate, allowed, confirmed and enrolled. Upon hearing Counſel on both Sides, neither the Poſſeſſion nor the legal Intereſt of the Eſtate being in the Defendant, a common Appearance was ordered to be accepted. *Skinner* for Defendant; *Hawkins* for Plaintiff.

Lord Molineux *againſt* Charles.

THE Queſtion was, Whether Defendant could be held to Bail for 10 *l.* in a County Palatine, the Statute 11 & 12 of *W.* 3. *cap.* 9. requiring 20 *l.* to be due; and the Act to prevent vexatious Arreſts extending every where but into *Scotland*, and requiring Bail for 10 *l.* Court took Time to conſider of it. (It hath been held in the *Exchequer*, that to hold to Bail in a County Palatine 20 *l.* muſt be ſworn due, as alledged at the Bar.)

Ling *againſt* Woodyer. Hil. 9 Geo. 2.

THE Court ordered the Hour of the Day, or true Time of the Defendant's Surrender, to be entered by the Filazar, in order that it might appear whether the Surrender was made before or after the Riſing of the Court. *Maſon* againſt *Bruce*, *Trin.* 7 & 8 *Geo.* 2. *Hawkins* for Plaintiff; *Corbet* for Defendant.

Huckle *againſt* Ambroſe. Trin. 10 Geo. 2.

DEfendant was brought by *Clendon*, one of his Bail, to Mr. Juſtice *Denton*'s Chamber and ſurrendered, and the *Reddidit ſe* ſigned by the Judge; whereupon *Clendon* fraudulently departed and refuſed to pay the Fees. *Price*, the Tiptaff, looking upon this to be a Trick, and that the Surrender was not compleat without Payment of the Fees, refuſed to take Charge of the Defendant, who went away at large: *Price*, upon Affidavit of this Matter, applied to the Court to vacate the Surrender, and *Clendon* was ordered to ſhew Cauſe; and upon ſhewing Cauſe, the Fact appearing to be as ſtated by *Price*'s Affidavit, the Court was of Opinion that the Entry of the *Reddidit ſe* upon the Bail-piece is only an Eſcrol, and a Warrant to the Filazar to enter the Surrender upon Record; as it was *Clendon*'s Duty to pay the Fees, and he refuſed, the Surrender is no Surrender, but ineffectual, and ought not to be recorded; and the Entry upon the Bail-piece being obtained by Fraud and Impoſition, was ordered to be ſtruck out. *Vide Fariſley* 77. 2 *Keble* 2. *Chapple* for *Price*; *Wright* for *Clendon*.

Willoughby, Adminiſtrator of Lady Jenkins, *againſt* Rhodes.

On a Bail-Bond. THE Proceedings were ordered to be ſtayed on Payment of Coſts; it appearing that Lady *Jenkins*, the Plaintiff in the original Action, died before Judgment could be recovered therein. *Chapple* for Defendant; *Eyre* for Plaintiff.

Bett *againſt* Goodman and another.

UPON an Affidavit that Defendants were indebted to Plaintiff generally 13*l.* *Capias ad reſpondendum* was indorſed in like manner to hold them to Bail; the *Ac etiam* was againſt them ſeverally, and they were arreſted and ſeverally held to Bail: And Plaintiff having proceeded againſt the Sheriff by Rule to bring in the Bodies, *Wright* moved for Defendants for a common Appearance, and to ſtay Proceedings againſt the Sheriff, inſiſting that as the Affidavit was of a joint Demand, and the Indorſement agreeable thereto, there was no Affidavit to warrant Bail in ſeparate Actions. *Eyre* urged *pro Quer'*, That the Act of Parliament requiring an Affidavit of the Cauſe of Action doth not require it to be very particular; an Affidavit that Defendants are generally indebted, is ſufficient to hold them to Bail jointly or ſeverally, as Plaintiff chooſes to proceed; but the Court being of Opinion that the Affidavit was not ſufficient to hold Defendants to Bail ſeverally, *Eyre* cloſed with a Propoſal made by *Wright*, to accept 13 *l.* for the Debt and Coſts in the joint Action.

Weyman *againſt* Weyman. Mich. 10 Geo. 2.

AN Action of Debt was brought upon a Judgment after a Writ of Error, and Bail put in thereupon; but no Bail was given in the original Action: And the Queſtion was, Whether Bail being put in upon the Writ of Error, Defendant ought to be held to Bail in the Action on the Judgment: It was urged for Defendant, that according to the Courſe of the Court, where Bail is given in the original Action, no Bail is required in the Action on the Judgment; and the Bail in Error who are bound for Debt and Coſts, and cannot ſurrender the Principal, are a better Security than Bail in the original Action. *Per Cur'*: No Inſtance can be ſhewn where Bail put in on a Writ of Error has been held ſufficient to excuſe Bail in an Action of Debt on Judgment. Defendant was held to Bail. *Eyre* for Defendant; *Chapple* for Plaintiff. It was ſaid by *Chapple*, who quoted *Cooper* and *Price*, *Syd.* 294. *Hickman* and *Corbet*, 2 *Keb.* 53, & 70. that in Caſe the Writ of Error ſhould be *non-pros'd* for want of tranſcribing the Record, the Bail would not be liable; but the Law is otherwiſe; and the Bail being bound to proſecute the Writ of Error with Effect, are liable in Caſe of *Non-pros*

Shaw,

Shaw, Bart. *againſt* Hawkins.

THIS was an Action of Debt on Bond, wherein Defendant was held to Bail on Plaintiff's Affidavit. Defendant moved for a Common Appearance, and that Plaintiff might produce the Bond to the Court, upon an Affidavit that Defendant had great Reaſon to believe that the whole Sum due was paid by one of his Co-obligors, which would appear by Indorſements made on the ſaid Bond when produced. Plaintiff in Anſwer, made Affidavit, that 100 *l.* and upwards remained due to him on the Bond, after all juſt Allowances; that he had ſeen the Bond, which was uncancelled and in full Force ſome few Months before, but had miſlaid it; and being ſeverely afflicted with the Gout could not ſearch among his Papers himſelf, ſo that it could not be produced. It was urged for Plaintiff, that no Declaration being yet delivered, Defendant is not intitled to *Oyer* of the Bond; but after a Declaration, with a *Profert in Cur'*, he may demand *Oyer*. The Court held, That as the Matter of Bail is diſcretionary, and as the Meaſure of the Sum for which Bail ought to be given, is with Certainty to be had only from the Bond itſelf, the Bond ought to be produced, and for want of producing it a Common Appearance was ordered. *Wynne* for Defendant; *Chapple* for Plaintiff.

Spinks *againſt* Bird.

PLaintiff declared in an Action of Debt upon Bond: Defendant craved *Oyer*, and the Condition appeared to be for Performance of Covenants. Defendant, after *Oyer*, inſtead of Pleading, enters *Nil dicit*, in order that *Oyer* of the Condition appearing upon Record, he might bring a Writ of Error without Bail. The Court, upon hearing Counſel on both Sides, ſet aſide this Entry, and gave Plaintiff Leave to enter Judgment by Default: And the Queſtion now was, Whether the Condition of the Bond not appearing on Record, Bail ought to be required on the Writ of Error or not? And the Court held, that the Matter of Bail is properly examinable by Affidavit; and the Bond being conditioned for Performance of Covenants, Bail ought not to be required on the Writ of Error. *Parker* for Defendant; *Chapple* for Plaintiff.

Debalſe *againſt* Mackenſie. Hil. 10 Geo. 2.

PLaintiff had made Affidavit that Defendant was indebted to him a large Sum of Money ordered to be paid by a Sentence of the Bailiff of *Meudon* in *France*, as a Compenſation for not making good a Charge againſt Plaintiff for Bigamy. Defendant had appealed to the Parliament of *Paris*; and it appeared by the Acts of that Court, that the Sentence of the Bailiff of *Meudon* was annulled (not upon the Merits, but according to the Cuſtom of the Superior Court, who, on an Appeal from an inferior Juriſdiction, conſtantly annul the former Sentence, and proceed as in an original Suit); and the Queſtion was, Whether Defendant ought to be held to Bail or not? Lord Chief Juſtice, *Denton*, and *Comyns*, were of Opinion, that as the Sentence of the Bailiff of *Meudon* appeared to be annulled, and not in Force, it was not neceſſary for the Court to conſider whether this Sentence, when in Being would have been a ſufficient Cauſe of Action to hold Defendant to Bail; but looked on the Sentence as diſcharged and made void; and therefore ordered a common Appearance to be accepted. Mr. Juſtice *Forteſcue* was of Opinion Defendant ought to be held to Bail. *Eyre* and *Wynne* for Defendant; *Chapple* for Plaintiff.

Harris *againſt* Roberts. Eaſter 10 Geo. 2.

IN an Action of Debt on Bond, atteſted by one Witneſs only, Plaintiff had been nonſuited on *Non eſt factum* pleaded, the Witneſs not making ſufficient Proof of the Execution of the Bond. Plaintiff brought a new Action on the ſame Bond: Defendant moved for a Common Appearance, and obtained a Rule to ſhew Cauſe, which was diſcharged on hearing Counſel on both Sides. *Note*; Defendant did not in his Affidavit deny the Execution of the Bond. *Eyre* and *Wynne* for Defendant; *Chapple* for Plaintiff quoted *Chambers* againſt *Robinſon*. *Mich.* 1 *Geo.* 2. in *C. B.*

Gregory *againſt* Gurdon.

AFTER an Exception againſt the Bail put in before a Judge, Defendant added Bail; but did not juſtify in Court purſuant to the Rule for perfecting Bail in four Days. Plaintiff proceeded on the Bail-Bond without excepting againſt the additional Bail; and the Proceeding was held regular. *Hayward* for Defendant; *Chapple* for Plaintiff.

Parrot, Adminiſtrator, *againſt* Smith.

PLaintiff makes Affidavit that Defendant is indebted to him, as Adminiſtrator, 40*l.* by Promiſſory Note given by Defendant to Plaintiff's Inteſtate, as Plaintiff believes, and as appears by Note in Plaintiff's Cuſtody, to which he refers. The Parties had attended Mr. Juſtice *Forteſcue*, who was of Opinion that this Affidavit did not contain ſufficient Certainty of the Cauſe of Action, and ordered a Common Appearance. *Parker* moved to diſcharge the Order; urging that the Affidavit was ſufficient to ſhew a probable Cauſe of Action, (which is all that in this Caſe is requiſite) and is as ſtrong as an Adminiſtrator can poſſibly make. *Per Cur:* Let the Judge be re-attended.

Birch, Attorney, *againſt* Graves.

DEfendant being arreſted at Plaintiff's Suit in an Action for Fees, *&c.* entered into a Bail-Bond with Sureties, which for want of Bail above was aſſigned, and Actions brought thereon; wherein Plaintiff declared. Defendant pleaded *Non eſt factum*, and after Verdicts for Plaintiff at laſt Aſſizes, *Chapple* moved for Leave to file Bail in the original Action, on Payment of Coſts, and conſenting that Plaintiff might take Judgment on the Bail-Bond to ſtand as a Security for what he ſhould recover; and produced an Affidavit from Defendant that he never, in his own ſeparate Capacity, employed Plaintiff as his Attorney; and that he had a good Defence in this Action. A Rule was made to ſhew Cauſe, which was afterwards made abſolute. *Chapple* for Defendant; *Eyre* and *Wright* for Plaintiff.

Goodtitle *againſt* Bennington. Trin. 10 & 11 Geo. 2.

In Ejectment. A Writ of Error being brought, and the Bail thereon offering to juſtify in Court, it was objected by *Agar* for Defendant in Error, that the Recognizance was irregular; for that the Party, Plaintiff in Error, ought himſelf to be bound, as required by Stat. 16 & 17 *Car.* 2. *Eyre* anſwered, That by that Statute the Recognizance of the Party himſelf alone is ſufficient; and ſince he hath not taken Advantage thereof, but hath found Sureties, Defendant in Error has a larger, and probably better Security than by Law he is intitled to. The Practice was reported to be various; ſometimes the Party himſelf was ſingly bound, and at other Times Sureties engaged for him. The Bail juſtifying in Court were allowed. Plaintiff may ſue out Execution at his Peril.

Sampſon *againſt* Warren. Mich. 11 Geo. 2.

PLaintiff, having made Affidavit of his Debt *in Banco Regis*, cauſed Defendant to be arreſted by *Latitat* indorſed for Bail. Defendant removed himſelf to the *Fleet* by *Habeas Corpus* charged with this *Latitat*, and Plaintiff declared againſt him there without making a ſecond Affidavit. Defendant moved to be diſcharged on entring a common Appearance, inſiſting that, in order to hold him to Bail regularly, Plaintiff ought to have made Affidavit of his Debt in this Court, and procured it to be indorſed on the Declaration according to the Rule *Mich*. 8 *Geo*. 2. a Rule was made to ſhew Cauſe, which was diſcharged, the Court being of Opinion, that the Rule of Court extends only to Caſes where a Declaration is the firſt Proceeding, and not to this Caſe. *Burnett* and *Draper* for Defendant; *Eyre* for Plaintiff.

Hanſley *againſt* Page. Hil. 11 Geo. 2.

KEttleby moved to ſet aſide *Fi. Fa.* againſt the Bail, Defendant having ſurrendered himſelf in their Diſcharge. It appeared by the Affidavit, that the ſecond *Sci. Fa.* was returnable *Cro. Mart. Nov.* 12. and that Defendant ſurrendered himſelf *November* 15. the Appearance-Day of the Return. *Per Cur'*: The Affidavit is defective; it doth not appear that the Defendant ſurrendered *(ſedente Curiâ)* on the Appearance-Day of the Return of the ſecond *Sci. Fa.* which if he did not, the Surrender is out of Time. No Rule.

Waſs *againſt* Cornett *and* Malpas.

THIS was an Action brought againſt Defendants on a Recognizance as Bail, Defendants moved to ſtay the Proceedings for want of fifteen Days between the Teſte and Return of the *Capias ad reſpondendum,* and not aided by Statute, a Rule was made to ſhew Cauſe, why Proceedings ſhould not be ſtaid. On ſhewing Cauſe, Plaintiff inſiſted, that this being a Matter of Error, and not of Irregularity, the Motion was improper. *Per Cur:* The Rule ſhould have been to ſhew Cauſe why the Writ ſhould not be quaſhed. Defendant cannot have *Oyer* of the *Capias,* and therefore cannot take any Advantage by Pleading. Plaintiff choſe to begin *de novo,* and a Rule by Conſent was made to quaſh the Writ. *Draper* for Defendant; *Wright* for Plaintiff.

Ruſſel *againſt* Gately. Eaſter 11 Geo. 2.

MR. Juſtice *Comyns* had ordered Bail for 200 *l.* in an Action for a malicious Proſecution for Forgery upon Plaintiff's Affidavit. Defendant moved for a common Appearance; and it appearing that Plaintiff was not acquitted of the Indictment upon the Merits, but upon a Flaw, and no Precedent being produced of an Order for Bail in ſuch an Action as this (though for falſe Impriſonment there was) the Rule to ſhew Cauſe why a common Appearance was made abſolute. *Eyre, Parker* and *Hayward* for Defendant; *Wright* and *Wynne* for Plaintiff.

Calveraq and his Wife *againſt* De Miranda.

IN an Action of Treſpaſs and Aſſault to the Damage of 500 *l.* Mr. Juſtice *Forteſcue* had ordered Bail for 140 *l.* and the Defendant being preſent at the Time the Recognizance of Bail was taken, his Bail were bound jointly and ſeverally in 140*l.* Plaintiff re-

recovered a Verdict for 300*l.* and the Bail moved to ſtay Proceedings againſt them both on their Payment of 140*l.* and upon ſhewing Cauſe the Court were of Opinion, that as the Damages in the Writ were laid 500*l.* here is no Fraud upon the Bail, the Recognizance is ſeparate as well as joint, and in its Nature a Judgment, the Award of the Court thereupon is, that Plaintiff have Execution; therefore ſo far as the Penalty of each Recognizance will go, it is juſt and equitable the ſame be applied towards Satisfaction of the Condemnation-Money, for Payment whereof, and not of any particular Sum, the Condition is. The Practice of the King's Bench had been mentioned, but the Proceeding there by Bill, where Bail is taken without any particular penal Sum, differs widely from the Form of Proceedings here, and muſt be governed by the *Ac etiam Bille*, otherwiſe Bail might be defrauded. *Bootle* and *Burnett* for Bail; *Eyre* and *Hayward* for Plaintiff.

Lane *againſt* Jones. Firſt Friday in Term.

WILLIS an Attorney, being committed laſt Term by the Court for a Contempt, applied this Term to be diſcharged upon Bail. *Eyre* for *Willis*; *Skinner* and *Wright* for *Jones* the Proſecutor. This Commitment was for a Crime of moſt heinous Nature, ſcandalous to the whole Profeſſion. *Willis* hath done nothing towards clearing himſelf ſince his Commitment, tho' Proſecutor exhibited Interrogatories againſt him the firſt Day of this Term. *Cur'*: This was a grievous Crime, his Confinement will be Part of his Puniſhment: It is too early to apply yet, he may apply again the latter End of the Term. No Rule. He did apply the latter End of the Term, and was admitted to Bail.

Paradice, Aſſignee, *againſt* Holiday. Mich. 12 Geo. 2.

MOTION to ſet aſide Proceedings on Bail-Bond aſſigned and put in Suit *Oct.* 31. laſt returnable *tres Mich.* and being a Country Cauſe, Defendant had eight Days after the Appearance-Day excluſive to put in Bail, and the Bail-Bond could not regularly be put in Suit till *November* 1. *Gapper* for Plaintiff inſiſted that the Bail-Bond might be aſſigned at any Time, though it could not be *put in Suit*, which are the Words of the Act of

Parliament and General Rule of Court. *Per Cur'* : There is no Occaſion to decide this Matter at preſent here, the Bail-Bond is put in Suit too early; the *Capias* on the Bail-Bond aſſigned appears to be ſued out *October* 31. The Proceedings were ſet aſide. *Agar* for Defendant.

Luſhington *and* Doe on the Demiſe of Godfrey.

In Ejectment in Error. BAIL was put in by Plaintiff in Error, but he himſelf was not bound as required by the Statute of 16 & 17 *Car.* 2. *Draper* moved for Leave to take out Execution, and obtained a Rule to ſhew Cauſe. *Wright* for Plaintiff in Error urged, that it is become conſtant Practice to give Bail by Sureties, and more for the Advantage of Defendant in Error. *Per Cur'* : Before the Statute 16 & 17 *Car.* 2. no Bail was required in Dower, Ejectment, *&c. Per Stat.* 3. *Jac.* 1. Bail was required in Debt only. *Stat.* of *Car.* extends to all Perſonal Actions after Verdict, and requires Sureties; in Dower, real or mixed Actions (Ejectment is a mixed Action) after Verdict requires Party to be bound, and that ſufficient. This is a leſs Security, than by Bail who juſtify, the Party is bound by the Judgment. Bail in Error cannot be put in before a Commiſſioner in the Country. Method of the Statute cannot be followed without Inconvenience; a better Method where the Party lives at a great Diſtance from *London* is ſubſtituted, and has been the Practice ever ſince the Statute. The Rule diſcharged.

Woods *againſt* Armſtrong.

SKINNER moved for Bail upon a Writ of Error in an Action of Debt upon Bond, conditioned for Payment of 300*l.* mentioned in a Surrender of a Copyhold by Way of Mortgage, and not for Performance of Covenants, wherein Judgment had paſſed by Default. *Per Cur'* : There muſt be Bail. This Caſe is out of the Statute 16 & 17 *Car.* 2. but within the Statute 3 *Jac.* 1.

Nichols

Nichols *againſt* Dallyhunty.

AFFIDAVIT to hold to Bail, made by Plaintiff's Wife, who being convicted of Pocket-picking was tranſported; and afterwards being convicted of returning from Tranſportation, received Judgment of Death. Theſe Matters appearing from Record, ſhe was looked upon as an infamous Perſon, and no Credit given to her Affidavit. Plaintiff offered to produce ſupplemental Affidavits to prove that Defendant had confeſſed the Debt, and that he intended to fly into *Ireland*: But *Per Cur'*, this Woman cannot be a Witneſs in any Caſe; and as there is not a ſufficient Affidavit to found the Proceſs, that Defect cannot be now ſupplied. Rule abſolute for Common Appearance. *Eyre* for Plaintiff; *Hayward* for Defendant.

Simpſon *againſt* Aſhburne.

RULE to ſhew Cauſe why Proceedings on Bail-Bond ſhould not be ſet aſide. Bail above was put in, and being excepted againſt laſt Vacation, the Bail juſtified at a Judge's Chamber in due Time; but Plaintiff being diſſatisfied therewith, Notice was given to juſtify in Court on the firſt Day of this Term; the Bail was not juſtified 'till *October* 28, and in the Interim the Bail-Bond was put in Suit. The Court made a Queſtion, Whether in ſuch Caſe Defendant has the firſt Day of the Term only, or the firſt four Days of the Term to juſtify in Court; but the Practice appearing to be unſettled in that Particular, the Point was not determined; and the Juſtification here not being within the firſt four Days, the Bail-Bond was held to be regularly put in Suit, but Proceedings thereon ſtayed on Payment of Coſts.

Le Writ *againſt* Tolcher.

PLaintiff made Affidavit that Defendant had ſeized and detained his Ship to his Damage; and a *Capias ad reſpondendum* was thereupon indorſed for Bail, without a Judge's Order. Rule for common Appearance and *Superſedeas* was made abſolute; the Damages in this Caſe are uncertain, and Plaintiff was not entitled to Bail without a Judge's Order. In *Debt*, *Aſſumpſit*, *Trover*, Covenant by *Ac etiam*, Bail is of courſe. In *Treſpaſs*, *Detinue*, and ſpecial Action on the Caſe, or of Covenant, at Diſcretion: For Words no Bail, unleſs Slander of Title. *Eyre* and *Wright* for Defendant; *Wynne* for Plaintiff.

Champion *againſt* Townſhend.

MOVED by *Wright* to diſcharge Proceedings againſt Sheriff upon Circumſtances, *viz.* the Bail to the Sheriff good, when Defendant arreſted the 4th of *Auguſt* laſt; and the Sheriff was obliged to take Bail under the Statute of *Hen* 6. but the Bail ſince were become inſufficient. Denied, but enlarged the ſix Days Rule to bring in the Body three Days further.

Henley *againſt* Anderſon.

RULE for *Vic' Midd'* to bring in the Body within ſix Days, which the Sheriff did not. Plaintiff moved for Attachment, and the Court made Rule to ſhew Cauſe. The Sheriff ſhewed for Cauſe, that Bail was put in and juſtified, and produced the Rule of their having juſtified: But it appearing that they had not juſtified before the Plaintiff's Application to the Court for Attachment, the Court ordered, That on Payment of Coſts the Rule ſhould be diſcharged. *Eyre* for the Sheriff; *Urlin* for Plaintiff.

Whittingham *againſt* Coghlan. Hil. 12 Geo. 2.

THIS was an Action brought for 50*l.* Penalty, given by Act of Parliament for Defendant's practiſing as an Attorney, not being duly admitted; wherein Defendant was held to Bail. Rule to ſhew Cauſe why common Appearance, and *Superſedeas* abſolute. This is for a Fine or Amerciament, and is in the Nature of a *Qui tam*. *Eyre* for Plaintiff; *Hayward* for Defendant.

Lloyd *againſt* Painter.

RULE to ſhew Cauſe why Proceedings on Bail-Bond ſhould not be ſtayed, made abſolute on Payment of Coſts, accepting Declaration in the original Action, pleading the General Iſſue, and taking Notice of Trial within Term, and the Bail-Bond to ſtand for Security, Plaintiff having been delayed of Trial. It was objected for Defendant, that Plaintiff had delayed himſelf; he might have declared *de bene eſſe*; but *per Cur'*, There is no Neceſſity for ſo doing.

Huggins *againſt* Bambridge.

A *Capias ad reſpondendum* indorſed for Bail being iſſued: Defendant, before the Return of the Writ, and before he was arreſted, put in Bail before a Judge, and gave Notice thereof to Plaintiff's Attorney. Plaintiff regarded not the Notice, but cauſed Defendant to be arreſted; and he being in Cuſtody moved for a *Superſedeas*, and had a Rule to ſhew Cauſe: It appearing that Plaintiff had not excepted againſt the Bail within twenty Days after Notice thereof, the Court was of Opinion that the Bail ought to ſtand, and the Rule was made abſolute. *Eyre* for Plaintiff; *Skinner* for Defendant.

Liſle *againſt* Jenyns.

DEfendant, having borrowed 500*l.* of Plaintiff, gave her a Mortgage for Security, which Mortgage was accidentally burnt. Defendant had paid 100*l.* in Part; and in *April* 1738. was prevailed upon to give Plaintiff a new Bond for the remaining Principal and Intereſt; whereon an Indorſement was made, ſigned by Plaintiff, acknowledging the new Bond to be for the old Debt. Defendant, after having obtained his Diſcharge from the Seſſions as a Fugitive for Debt, was arreſted on this new Bond, and applied for a common Appearance, and had a Rule to ſhew Cauſe, which was made abſolute. The Juriſdiction at the Seſſions is final, no Appeal lies from it. *Per Cur'*: This Debt appears to be contracted, incurred and occaſioned before the Day for that Purpoſe mentioned in the Statute, which Statute extends to 500*l.* Debt, beſides Intereſt and Coſts. *Skinner* for Plaintiff; *Eyre* and *Wright* for Defendant.

Deriſley, Attorney, *againſt* Deland. Eaſt. 12 Geo. 2.

WRIGHT for Defendant moved to ſtay Proceedings againſt the Bail in Actions of Debt brought on the Recognizance, pending the Writ of Error, and obtained a Rule to ſhew Cauſe: *Eyre* for Plaintiff urged, That the Bail ought to give Judgment, and Execution only ſhould be ſtayed. But the Court held otherwiſe in the Caſe of Bail, who, by giving Judgment would be precluded for ſurrendering the Principal. He then urged, that a *Ca. Sa.* againſt the Principal had been returned, and the Bail were too late to ſurrender: But this is not ſo, the Bail may ſurrender the Principal before or on the Appearance-day of the Return of the Action on the Recognizance, where Plaintiff proceeds that Way. If the Proceeding againſt them be by *Sci. Fa.* before or on the Appearance-day of the Return of the firſt *Sci. Fa.* ſitting the Court, in Caſe of a *Scire Feci* returned, or the Appearance-day of the Return of the ſecond *Sci. Fa.* ſitting the Court, in Caſe of two *Nichils* returned. Rule abſolute.

Darch *againſt* Parry.

Debt on Bond. AFFIDAVIT to hold to Bail, made by Plaintiff's Attorney, that there is a Bond, that Money appears due; and Defendant a Year and Half ago owned the Debt, and offered to compound. Motion *per Skinner* for Defendant for common Appearance. Shew Cauſe. The firſt Part of the Affidavit was held defective, but the latter proving the Acknowledgment of the Debt, ſufficient to hold to Bail. Rule diſcharged. *Eyre* for Plaintiff.

Teale *againſt* Cheſhire.

DEclared by the Court, that after this Term the Defendant ſhall give Notice of juſtifying Bail two Days before Day of Juſtification; and that they will not indulge the Defendant with any further Time, it being an Artifice to defeat the Rule for obliging Defendant to perfect Bail in four Days after Exception taken, and is plainly getting two Days.

Deriſley *againſt* Deland.

CA. Sa. iſſued againſt the Principal, and was lodged with the Sheriff for a *Non eſt invent'* in order to proceed againſt the Bail. After *Ca. Sa.* lodged, Defendant brought a Writ of Error; and after the Writ was ſpent, Plaintiff got a Return of the *Ca. Sa.* and proceeded againſt the Bail, which Proceeding was diſcharged; the Court holding that the *Ca. Sa.* being returnable at a Time when the Writ of Error was depending, was not a regular Foundation for a Proceeding againſt the Bail. *Eyre* for Defendant; *Wright* for Plaintiff.

Huggins *againſt* Bambridge. Eaſter 13 Geo. 2.

DEfendant hearing that a *Capias ad reſpondendum* was ſued out againſt him, put in Bail at a Judge's Chamber before any Arreſt, and before the Return of the Writ, and gave Notice thereof to Plaintiff's Attorney. Plaintiff not being ſatisfied with the Bail, cauſed Defendant to be arreſted, who applied to the Court, and obtained a Rule to ſhew Cauſe why an Attachment ſhould not be iſſued againſt Plaintiff, and againſt *Duell* the Sheriff's Officer, who arreſted Defendant, and *Gurney* his Follower. Upon ſhewing Cauſe, the Prothonotaries and Secondaries all reported, and the Court was of Opinion, that Bail before a Judge cannot regularly be put in before an Arreſt without Plaintiff's Conſent. If Plaintiff diſlikes ſuch Bail, he may cauſe Defendant to be arreſted; he has no other Remedy, the Sheriff being unconcerned, and no Bail-Bond taken. If ſuch voluntary Bail were ſufficient to prevent an Arreſt, Defendant might put in ſham Bail, and thereby elude the Writ, and the Proceſs muſt be loſt. Bail may be put in before the Return of a Writ after an Arreſt, but never before an Arreſt without Conſent. The Rule was diſcharged. *Skinner*, *Wynne* and *Agar* for Defendant; *Burnett* and *Bootle* for Plaintiff.

Ward, an Attorney, *againſt* Alderton.

BAIL being juſtified in Court, *Prime* for Defendant moved after the laſt Sitting within Term to ſtay Proceedings on Bail-Bond upon Payment of Coſts. *Agar* for Plaintiff inſiſted, that the Action being laid in *Middleſex*, and the Writ returnable the firſt Return, Plaintiff had been delayed of Trial, and the Bail-Bond ought to ſtand as a Security; but it appearing that no Declaration in the original Action had been delivered *de bene eſſe*, or otherwiſe, Plaintiff has delayed himſelf, and the Rule muſt be made abſolute.

Calveraq and his Wiſe *againſt* Pinhero, in Debt on Recognizance as Bail for Miranda, in a Joint Action for an Aſſault againſt Miranda and two others. The Pleadings were as follows, viz. Mich. 13 Geo. 2.

PLaintiffs ſet out the Recognizance as in a ſeparate Action againſt *Miranda*, with Condition, that if Judgment ſhould be given for them againſt *Miranda*, he ſhould pay the Condemnation-Money, or ſurrender, *&c.* and for Breach aſſigned, that although Plaintiffs recovered Judgment againſt ſaid *Miranda* and the other two Defendants; yet Defendant *Miranda* did not pay the Condemnation-Money, or ſurrender, *&c.* Defendant pleads *Nul tiel Record* of the Judgment againſt *Miranda*, taking no Notice of the other Defendants. Plaintiffs reply, that there is a Record of the Judgment againſt *Miranda* and the other Defendants, as ſet forth by the Declaration, and deliver the Iſſue, giving themſelves a Day to produce the Record. Defendants Attorney's Clerk received this Iſſue in his Maſter's Abſence; the Maſter next Day returned it, and delivered a Demurrer to the Replication. *Wright* and *Draper pro Quer'* urged that this Demurrer is irregular after Iſſue joined upon *Nul tiel Record*. The Plaintiffs, though they did not bring the Record into Court at the Day given in the Iſſue-Book laſt Term, are intitled to have a new Day aſſigned by the Court; and a Rule was made to ſhew Cauſe why the Demurrer ſhould not be ſet aſide; why Defendants Attorney ſhould not receive the Iſſue by him returned; and why Plaintiffs ſhould not be at Liberty to verify the Record, and a Day be appointed for that Purpoſe. *Eyre* came to ſhew Cauſe for Defendants, and argued that no Iſſue is joined; that one Record is averred by Plaintiffs, and another denied by Defendants. *Per Cur'*: The Queſtion is not whether Iſſue be rightly or legally joined, the Plaintiffs cannot take upon them to judge of that Matter: Here is an Iſſue joined; and a Demurrer cannot be received after Iſſue joined; if no proper Iſſue be joined, Defendant may take Advantage thereof in Arreſt of Judgment. The Plaintiffs may continue the Day for bringing in the Record by them averred. Rule abſolute.

Hugh Hunt *againſt* Hudſon and others.

MOTION in the *Treaſury* for Bail in an Action for meſne Profits, after a Recovery in Ejectment, upon the Leſſor of the Plaintiff's Affidavit that the meſne Profits amounted to 89*l.* Bail ordered for 80*l.* This is a Cauſe of Action which is bailable, or not, at the Diſcretion of the Court or a Judge.

Otway *againſt* Cokayne. Trin. 13 & 14 Geo. 2.

AFTER Plaintiff had been delayed of Trial, Defendant juſtified Bail, and obtained a Judge's Order to ſtay Proceedings on the Bail-Bond, upon Payment of Coſts, *&c.* and conſenting that the Bail-Bond ſhould ſtand as Plaintiff's Security. Plaintiff recovered Judgment in the Original Action, and then renewed his Proceedings, and declared on the Bail-Bond. Defendant pleaded *Comperuit ad diem*; which Plea the Court ordered to be ſet aſide, and gave Plaintiff Leave to enter Judgment on the Bail-Bond immediately, but ſtayed Execution for a Week. It is always intended, and ought in theſe Caſes to be expreſſed, That Judgment be given, and Execution only ſtayed. *Bootle* for Plaintiff; *Agar* for Defendant.

Kettelby *againſt* Woodcock. 31ſt *October*, In Treaſury, Mich. 14 Geo. 2.

AGreement in Writing to deliver a certain Quantity of Goods within a certain Time, at the Price of 300 *l.* or in Default thereof, that Defendant would forfeit and pay to Plaintiff 100 *l.* Action brought for the Penalty; and upon the Queſtion of, Bail or No Bail? The Judges were of Opinion that Defendant ought to be held to Bail.

Goſtelow *againſt* Wright.

PLaintiff brought an Action upon the Caſe againſt Defendant, who appeared, and Plaintiff recovered Judgment, and then brought Debt on the Judgment, and held Defendant to Bail, and recovered a ſecond Judgment. After a *Ca. ſa.* returned againſt the Principal, and before the Return of the Writ in an Action of Debt upon the Recognizance againſt the Bail in the ſecond Action, the Court was moved to ſtay Proceedings on the Recognizance, pending a Writ of Error brought to reverſe the firſt Judgment; and upon the Bail's conſenting to give Judgment in the Actions brought againſt them, the Rule obtained to ſtay Proceedings was made abſolute. *Burnett* for the Bail; *Wynne* for Plaintiff.

Carleton *againſt* Wilkinſon.

DEfendant was outlawed on Special Original, and upon reverſing the Outlawry, put in Bail with Condition, as uſual, to appear to a new Original, to be filed within two Terms. Plaintiff proceeded to Judgment, and Defendant brought a Writ of Error; a Motion was made on Behalf of the Bail, to diſcharge their Recognizance, no Original having been filed within two Terms; and a Rule made to ſhew Cauſe; which was diſcharged: The Bail may plead as they ſhall be adviſed. *Skinner* for Plaintiff; *Agar* for Defendant.

Manning *againſt* Williams.

THIS was an Action brought on a Bottomree-Bond, and the Queſtion was, Bail, or No Bail? Two Affidavits for Bail had been made by Alderman *Willimott*; the firſt was, That the Alderman believed Defendant was indebted to Plaintiff, *&c.* which was held inſufficient. Where the Affidavit is made by a third Perſon, it muſt be poſitive, unleſs in the Caſe of an Executor, *&c.* where Belief is ſufficient. The Alderman, by Leave of the Court, made a ſecond Affidavit, That Defendant was indebted to Plaintiff, *&c.* if the Ship *Suſſex* be not unavoidably loſt: The Ship was agreed to be loſt, and Affidavits were read on both Sides, controverting the Fact, whether the Loſs was unavoidable, or not. *Per Cur'*: The ſecond Affidavit of the Alderman is *prima facie* ſufficient; otherwiſe there could be no Bail on Bottomree-Bonds; but the Affidavits *ex parte defendentis* turn the Balance: The Alderman is ſupported by two Perſons, who ſwear the Ship might have been ſaved; but for the Defendant, eleven Perſons ſwear the Loſs was unavoidable. Rule abſolute for Common Appearance. *Skinner* and *Belfield* for Plaintiff; *Prime* and *Burnett* for Defendant.

Treherne *againſt* Greſſingham. Mich. 15 Geo. 2.

PLaintiff, after having recovered Judgment in Ejectment againſt the Caſual Ejector by Default, brought this Action for meſne Profits, wherein he had obtained a Judge's Order to hold Defendant to Bail; and, by Miſtake, made his *Ac etiam* in Treſpaſs upon the Caſe, inſtead of Treſpaſs only, as it ought to have been. Defendant moved for a Common Appearance; and it was inſiſted on Plaintiff's Behalf, that Defendant having put in Bail before a Judge to the *Ac etiam* in Caſe, was now too late to apply. After ſome Debate, Plaintiff accepted a Common Appearance. It was obſerved *(per Cur')* that theſe Actions for meſne Profits, (which are grown very faſhionable) tend to create double Expence. Why ſhould not Plaintiff be ready at the Trial of the Ejectment to prove his Damages, which may be recovered in that Action, without bringing a ſecond for meſne Profits. The true Rule as to the Time from which meſne Profits are to be re-

recovered, ſeems to be where Judgment is againſt the Caſual Ejector, from the Time of the Delivery of Declarations to the Tenants in Poſſeſſion, or from the Time of an actual Demand of Poſſeſſion proved, where Judgment is againſt the Tenants in Poſſeſſion (or the Landlord defending in their Stead) from the Ouſter admitted by the Common Conſent Rule; but in neither Caſe from the Demiſe, which may be laid back at Plaintiff's Pleaſure. *Urlin* for Defendant; *Birch* for Plaintiff.

Elton *againſt* Manwaring; Thomas *againſt* The Same. In Monmouthſhire.

TUeſday 3d *November*, *Skinner* moved to juſtify Bail for Defendant, who was in Cuſtody, upon the uſual Affidavit; and upon an Affidavit of Notice of the Juſtification ſerved on *Saturday* laſt, *Birch* for Plaintiffs objected to the Shortneſs of the Notice, and that Plaintiffs had not ſufficient Time to inquire after the Bail. But *per Cur'*: Two Days Notice of Juſtification is the general Rule in all Caſes, and the Bail muſt be allowed.

Satchwell *againſt* Lawes.

PRoceedings on Bail-Bonds ſtayed for Want of Notice of Exception againſt the Bail put in before a Judge, given in Writing to Defendant's Attorney. An Exception had been entered in the Filacer's Book, and verbal Notice thereof given to Defendant, but this is not ſufficient; 'tis neceſſary not only to enter an Exception in the Bail-Book, but alſo to give Notice in Writing to Defendant's Attorney. *Willes* for Defendant; *Skinner* for Plaintiff.

Newton *againſt* Lewis.

BAIL on an *Ac etiam*, *Capias ad reſpondendum*, and Surrender of the Defendant by his Bail before the Return of the Writ, were held to be irregular, and ſet aſide. *Non eſt inventus* may be returned, and then the Bail goes for nothing. If a *Cepi Corpus* be returned, Defendant, at the Return, is ſuppoſed to be in

Cuſtody of the Court, and then, if bailed, to be delivered to his Bail; and there can be no Surrender 'till after that Time. It has been held a Contempt, *in Banco Regis*, for the Bail below to become Bail above, and render the Principal before the Return of the Writ. But although Defendant is to be remedied with Reſpect to his Bail, Plaintiff muſt not be prejudiced; the Return of the Writ is now paſſed. Let Defendant be brought into Court by *Habeas Corpus*, and the Bail, being preſent, ſhall have Leave to render him *de novo*; which was done accordingly. *Prime* for Plaintiff; *Wynne* for the Bail.

Rayner *againſt* Brough. Eaſter 15 Geo. 2.

RULE to ſhew Cauſe why a Common Appearance ſhould not be accepted for Defendant, who had been arreſted in the County Palatine of *Durham*; the Sum ſworn due being under 20*l.* made abſolute. For Plaintiff it was urged, that the Statute 11 & 12 *W.* 3. requiring no Sheriff to hold to Bail in Counties Palatine, on Proceſs out of *Weſtminſter-Hall* under 20*l.* was virtually repealed by the Statute 12 *Geo.* 2. *c.* 29. which requires Bail in all Caſes where Affidavit ſhall be made that the Cauſe of Action amounts to 10*l.* the latter being a general Law, and extending throughout *Great Britain* (*Scotland* only excepted.) *Per Cur'*: Affirmative Words, without Negative, are not ſufficient to repeal a former Law; the Nature of the Caſe, and the Intent of the Legiſlature, are to be conſidered. Both the Statutes have the ſame Title, *viz.* To prevent vexatious Arreſts, and both were made in Favour of the Liberty of the Subject; they may ſtand together. In County Palatine 20*l.* muſt ſtill be ſworn due to require Bail. By a Rule of this Court, *Michaelmas* 1654, Bail is required for 20*l.* and for no leſs: And though a Practice was introduced in Chief Juſtice *North*'s Time to hold to Bail for 10*l.* (*Hiſtory of the Common Pleas, fol.* 37.) yet the old Rule remains undiſcharged. *Skinner* for Defendant; *Belfield* for Plaintiff.

Claxton, Aſſignee of the Sheriff, *againſt* Hyde and his Bail.

DEfendant moved, that the Exception againſt the Bail in the Original Action might be ſtruck out, and the Bail recorded, that he might verify his Plea of *Comperuit ad Diem*; inſiſting, that the ſame Bail being put in before a Judge who were Bail to the Sheriff, and Plaintiff having taken an Aſſignment of the Bail-Bond, had thereby waived his Exception, and the Bail above were become abſolute. A Rule was made to ſhew Cauſe. Caſes quoted for Defendant, *Groſvenor* againſt *Soames*, 6 Mo. *Hampſon* againſt *Sower*, *Eaſter* 1729; *Haman* againſt *Bennett*, *Hill.* 12 *Geo.* 2. in *B. R. Hambly* againſt *Dowharty*, Caſes in *C. B.* fol. 61. *Walſh* againſt *Haddock*, *Hil.* 2 *Geo.* 2. Upon ſhewing Cauſe, it was urged for the Plaintiff, that the Practice of this Court is ſettled by the Rule of *Trin.* 3 & 4 *Geo.* 2. Unleſs Bail be perfected, (that is juſtified in Court) within four Days after Exception, Plaintiff may proceed on Bail-Bond, by the Rule of *Mich.* 6. *Geo.* 2. Plaintiff may except againſt the Bail above, though the ſame as to the Sheriff; and *Ormond* againſt *Griffith*, *Hil.* 7 *Geo.* 2. is a Caſe in Point. *Notes of Caſes*, *fol.* 51. *Per Cur'*: Let the Rule be diſcharged. As the Practice of this Court ſtands at preſent, Plaintiff is regular to proceed upon the Bail-Bond. The Aſſignment doth not admit the Sufficiency of the Bail. The Sheriff may be inſufficient, and then, if Plaintiff cannot proceed on the Bail-Bond, he has no Remedy. *Skinner*, *Willes* and *Draper*, for Defendant; *Prime* and *Agar* for Plaintiff.

Clarke *againſt* Harbin. Hil. 16 Geo. 2.

MAY 20th 1742, a Writ of *Ha. cor.* returnable *immediatè*, was lodged at the Palace Court, to remove a Plaint from thence into this Court; and nothing further was done till 20th *November* laſt Term, when Plaintiff ſerved Defendant with a Rule to put in Bail. Defendant inſiſted, that Plaintiff ſhould have ſerved ſuch Rule within two Terms after the *Ha. cor.* brought, and was now too late. The Court held, That if Defendant had put in Bail upon his *Ha. cor.* without ſtaying to be forwarded by a Rule for Bail, and Plaintiff had not declared within two Terms after Bail put in, the Cauſe would have been out of Court, but the Rule for Bail is not limited to any particular Time. Rule to ſhew Cauſe why Proceedings ſhould not be ſtayed, was diſcharged. *Birch* for Plaintiff; *Agar* for Defendant.

Tribe and others, Aſſignees, &c. of a Bankrupt's Effects, *againſt* Pratt. Hil. 16 Geo. 2.

ONE of the Plaintiffs, in order to hold Defendant to Bail, made an Affidavit that Defendant was indebted to Plaintiffs 1300 *l.* as appeared by an Account under the Bankrupt's Hand. Defendant objected to this Affidavit, that the Account referred to by it, was not annexed or produced; that as the Bankrupt was living, and under the Power of the Aſſignees, he ought to have made the Affidavit; that Plaintiff who makes Affidavit, does not ſwear he believes the Sum to be due; that this Caſe differs widely from that where Plaintiff is an Executor or Adminiſtrator, who (Teſtator, *&c.* being dead) can only ſwear to Debts as they appear from Securities or Books of Account. The Court thought a poſitive Affidavit of the Debt neceſſary, unleſs it had appeared that the Bankrupt refuſed to make the ſame. And the Rule was made abſolute for a Common Appearance. *Prime* for Defendant; *Skinner* for Plaintiff.

Seaber *againſt* Powell. Eaſt. 16 Geo. 2.

RULE to ſhew Cauſe why Proceedings on the Bail-Bond ſhould not be ſtayed on Payment of Coſts, diſcharged, Plaintiff having been delayed of Trial, and Defendant and his Bail refuſing to conſent that the Bail-Bond ſhould ſtand for Plaintiff's Security. Defendant inſiſted, that Plaintiff not having declared *de bene eſſe*, had delayed himſelf; but the Writ in the Original Action being returnable laſt Term, that Objection will not hold. Declarations *de bene eſſe* are neceſſary to take the Advantage of the Term, if the Writ be of the firſt or ſecond Return, where Defendant is to plead without Imparlance, but not otherwiſe. *Prime* for Plaintiff; *Agar* for Defendant.

Liſter *againſt* Wainhouſe. Trin. 16 & 17 Geo. 2.

PLaintiff excepted againſt the Bail, and for Want of a Juſtification in Time, proceeded upon the Bail-Bond. A Declaration was delivered in the Original Action, after the Time for putting in Bail expired, as a Declaration *de bene eſſe*. Defendant moved to ſtay Proceedings on the Bail-Bond; inſiſting, that this Declaration muſt be looked upon as delivered in Chief, and conſequently as a Waver of the Exception; and that the Demand of a Plea confirms it. The Court over-ruled the firſt Objection, as to the Declaration, but held the Demand of a Plea to be a Waver of the Exception; 'tis admitting Defendant to be in Court, and in a Condition to plead. Rule abſolute to ſtay Proceedings on the Bail-Bond. *Prime* for Plaintiff; *Bootle* for Defendant. Juſtice *Burnett ſolus in Cur.*

Jackſon *againſt* Knight.

AFTER final Judgment, Defendant put in and juſtified Bail, and obtained a Rule to ſhew Cauſe why a *Superſedeas* ſhould not iſſue to diſcharge him out of Cuſtody. The Court diſcharged the Rule. After final Judgment 'tis too late to put in Bail; the Recognizance of Bail plainly imports that it muſt be entered into before Defendant be condemned in the Action.

Francis *againſt* Taylor. Hil. 17 Geo. 2.

A Bail-Bond taken upon a *Capias ad reſpondendum* ſued out of this Court, was aſſigned by the Sheriff to Plaintiff; and Bail above not being put in within the limited Time, Plaintiff's Attorney, for the Sake of ſerving the Bail with Proceſs within laſt Term, put the Bail-Bond in Suit in the Court of King's Bench, where his Writ was returnable on the *quarto die poſt* (the laſt general Return in this Court within laſt Term being then expired.) The Court thought this Proceeding unwarrantable. By an old Rule, Attornies of this Court are ordered not to bring Actions in other Courts; and the Act of Parliament directing the Aſſignment of Bail-Bonds, gives the Court, after ſuch Bonds are put in Suit, an equitable Juriſdiction to ſtay Proceedings, and to let a Defendant in to try the Merits of the Original Action, upon reaſonable Terms; which Juriſdiction cannot be exerciſed, unleſs the Original Action, and the Proceedings upon the Bail-Bond, were in the ſame Court. The Rule to ſet aſide the Proceedings upon the Bail-Bond was made abſolute, with Coſts, by Conſent of Plaintiff and his Attorney. *Skinner* for Defendant; *Prime* for Plaintiff and his Attorney.

Malland *againſt* Jenkins.

TO a *Sci. facias* on a Recognizance of Bail on a Writ of Error, not ſetting forth the Condition of the Recognizance, Defendant pleaded *Nul tiel Record*, and Iſſue being joined thereon, Defendant inſiſted, That the Record of the Recognizance, with a Condition ſubjoined, was not a Verification of the Recognizance, without Condition ſet forth in the *Scire facias*; That the Condition is Part of the Recognizance itſelf, and doth not operate by Way of Defeazance. Mr. *Warden* (an Aſſiſtant to the Clerk of the Errors) reported, That this *Scire facias* is made out by the Clerk of the Errors, and not by the Plaintiff's Attorney; That he has known the Office ſixteen Years, and the *Scire facias* has always been as in this Caſe, without ſetting forth the Condition of the Recognizance; That the Condition of the Recognizance in Error is not incorporated, as it is in a Recognizance of Bail on a *Capias ad reſpondendum*, but is ſubſcribed by Way of Defeazance. The Court held the *Scire facias* good, and gave Judgment for the Plaintiff on the Iſſue of No ſuch Record. The Recognizance and Condition, in this Caſe, are two diſtinct Records.

Books and Caſes quoted by the Counſel: *Lilly's Ent.* 557. *Officina Brevium* 262, 269, 284. *Perry* againſt *Collins*, *Trin.* 10 & 11 *Geo.* 2. *Croſs* againſt *Porter*, *Mich.* 11 *Geo.* 2. *Agar* for Plaintiff; *Hayward* for Defendant.

Smithſon, Baronet, Aſſignee, &c. *againſt* Thomas Smith, Gent. an Attorney. Eaſter 17 Geo. 2.

William Smith, Gent. Defendant in the Original Action was ſued by the Addition of *Clerk*, and entered into a Bail-Bond by that Addition. Bail above was put in within due Time for *William Smith, Gent.* who was arreſted by the Name and Addition of *Willlam Smith, Clerk*; and Plaintiff having excepted againſt the Bail, they juſtified in Court; Plaintiff declared *de bene eſſe* in the Original Action, and Defendant pleaded in Abatement within Time. Plaintiff took the Plea out of the Office, ſtayed Proceedings near twelve Months, and then filed a Bill as Aſſignee of the Sheriff, againſt *Thomas Smith, Gent.* an Attorney, one of the Bail in the Bail-Bond; inſiſting, that Defendant in the Original Action was eſtopped from pleading in Abatement; that the Bail put in as above, is no Bail for *William Smith, Clerk*; and that Defendant ought to be left to his Plea of *comperuit ad diem*. The Court thought the Application by Motion proper; and that the original Defendant was not eſtopped from pleading in Abatement by the Bail-Bond, which muſt be *prout* the Writ. That the Manner he purſued of putting in Bail, is the conſtant regular Method, and the only Way to ſave the Advantage of pleading in Abatement. Rule abſolute to ſtay Proceedings, with Coſts. *Willes* and *Bootle* for Plaintiff; *Prime* for Defendant.

Davies, Executor, *againſt* Leckie. Mich. 18 Geo. 2.

THIS was an Action of Debt brought on a Judgment recovered in the Palace Court. Defendant moved for a Common Appearance; inſiſting, that as Bail was filed in the Action wherein Judgment had been obtained in the Palace Court, no Bail ought to be required in this Action. The Court refuſed to order a Common Appearance, Plaintiff having no Bail in this Court before.

Studwell *againſt* Bunton. Hil. 18 Geo. 2.

DEfendant being a Seaman, in actual Service of the King, was arreſted, and held to Bail in the Palace Court; he removed the Action by *Ha. corpus*, and was diſcharged by this Court on a Common Appearance *ſecundum Stat.* 1 *Geo.* 2. *cap.* 14. the Debt being under 20 *l.* Plaintiff objected, that Defendant had abſented from the King's Service two Days after his Time of Leave given. But the Court held, that the Service continues whilſt Defendant's Name remains in the Ship Books. *Draper* for Defendant; *Skinner* for Plaintiff.

Wilcox *againſt* Proſſer and others. Eaſter 18 Geo. 2.

RULE abſolute to quaſh two Writs of *Sci. facias* returned *Nihil* againſt Bail, who had rendered the Principal after Judgment. The *Ca. ſa.* againſt the Principal, and the firſt *Sci. fa.* bearing Teſte on one and the ſame Day, *viz.* 23d *October* laſt. *Willes* for Defendant; *Birch* for Plaintiff.

Paris *againſt* Stroud and his Wife.

PLaintiff made Affidavit for Bail, That Defendants, or one of them, are indebted for Board, Clothes, Jewels, *&c.* provided for the Wife; Defendant the Huſband, an Infant, moved for a Common Appearance. The Court held, that if an Infant marries a Woman of full Age, (as in this Caſe) he is liable to her Debts; but thought Plaintiff's Affidavit not ſufficiently certain. Plaintiff had Leave to make a new Affidavit, and explain what was due before Defendant the Wife was of Age, and what after; and whether the Debt, or any Part, became due before the Marriage, or after. Plaintiff made a new Affidavit accordingly; and the Sum for which Bail was to be given was moderated at a Judge's Chamber. *Skinner* and *Willes* for Defendant; *Draper* for Plaintiff.

Nutkins, Executor, *againſt* Wilkin. Hil. 19 Geo. 2.

JUdgment in Action on Bail-Bond, ſigned two Days after Plaintiff's Death, and the Suit thereby abated; Plaintiff gave Defendant Time to plead, and died before that Time expired. Now the Bail-Bond was put in Suit by the Executor of the late Plaintiff deceaſed, and Defendant applied to ſtay Proceedings. The *Capias* in the Original Action was returnable *Tres Mich.* and Plaintiff might have had Judgment in his Life-time, if Defendant had not made Default, by not putting in Bail above. Proceedings ſtayed in the Original Action, and on the Bail-Bond, on Payment of 43 *l.* agreed to be the Debt and Coſts in the Original Action and in this Action. No Coſts in the firſt Action on Bail-Bond, wherein there was no Default by Defendant. *Prime* and *Draper* for Plaintiff; *Hayward* for Defendant.

Lawford *againſt* Gardiner and his Wife. Eaſter 19 Geo. 2.

BOTH Defendants arreſted for a Debt due from the Wife *dum ſola*; Bail above put in for both, and both rendered to the *Fleet* in Diſcharge of Bail. Motion to diſcharge the Wife, detained by meſne Proceſs, not in Execution. If the Wife had been arreſted before the Huſband, ſhe muſt have been diſcharged on common Appearance; after the Huſband is arreſted ſhe cannot be taken into Cuſtody again. Caſe of Liberty. Rule abſolute to diſcharge the Wife by *Superſedeas*, on entering common Appearance. Mr. Juſtice *Burnett contra.* *Birch* for Defendant the Wife; *Leeds* for Plaintiff.

Follett *againſt* Trill and Bowen, Bail for Powell. Mich. 20 Geo. 2.

PLaintiff recovered Judgment in the original Action brought in this Court, and laid in the County of *Surry.* Bail had been taken before a Judge, and after Judgment and *Ca. ſa.* returned againſt the Principal, *Non eſt inventus*; *Sci. fa.'s* againſt the Bail on the Recognizance were brought in *Surry*, and after two *Nichils* returned, Execution was awarded, and the Goods of the Bail taken *per Fi. fa.* Objected by the Bail, that the *Sci. fa.* ought to have been brought in the County of *Middleſex*, and not elſewhere; the Caption appearing by the Record of the Recognizance to be before the Chief Juſtice and his Brethren, in Court, as the Entry always is of a Bail on *Cepi Corpus* taken before a Judge at his Chambers. Rule to ſhew Cauſe why the Award of Execution and *Fi. fa.* ſhould not be ſet aſide, with Coſts. The Court, after hearing Counſel on both Sides, held the Objection good, and made the Rule abſolute, without Coſts. Where the Caption of the Recognizance appears to be in another County, and is afterwards inrolled in *Middleſex*, (as in ſome other Caſes) the *Sci. fa.* may be in either County; but where the Caption appears by the Record to be in *Middleſex*, the *Sci. fa.* muſt be in *Middleſex* alſo, and not elſewhere. A *Sci. fa.* to revive a Judgment is a Continuance of the Suit, and muſt be brought in that County where the original Action is laid. A *Sci. fa.* againſt Bail is the firſt Proceeding. *Allen* 12. *Mod. Caſes in Law and Equity* 290. *Lutw.* 1282, 1287. *Dalton* againſt *Teaſdale*, in this Court, *Eaſter* 2 *Geo.* 2. 2 *Salk.* 564.

N. B. Several of the Filacers attended, and reported the Practice as the Court held it to be; and that Filacer by whom the Bail-piece is filed, and who enters the Record of the Recognizance on his Roll, makes out the firſt *Sci. fa.* into *Middleſex*, or other proper County, as the Caſe requires; the ſecond *Sci. fa.* (when neceſſary) is ſigned by the Prothonotary. *Willes* for Defendant; *Bootle* for Plaintiff.

Fuit tenus Hil. 44 *Eliz. per* 4 *Juſt. q' Sci. fa. ſup. Recogn. p't iſſuer al Vic. del lieu ou le Caption fuit. Et q' n'eſt aſcum neceſſity q' il iſſera al Vic. Midd. ou eſt inrole proviſo q' le Entrie ſoit fait accord't. Vide ſimile ſup. Recogn. capt. coram J. Dyer apud Caſtrum Lincoln. Hil.* 6 *Eliz. Rot.* 1887. *Paſch.* 35 *H.* 6. *Rot.* 37. *C. B. Suff. Recogn.* to pay Money to one, taken by *Pryſot*, C. J. at *St. Edmund's Bury. Offic. Brev. fo.* 17. & *fo.* 316. *Hob.* 195.

Littleton, Executor, *againſt* Hanſon. Mich. 20 Geo. 2.

PLaintiff moved for Leave to take out Execution, no Bail being put in, or Writ of Error brought by Defendant; and the Action being in Debt on Bond, conditioned only for Payment of Money, according to the true Intent and Meaning of an Indenture, and not Performance of Covenants; alſo Rule to ſhew Cauſe. Upon ſhewing Cauſe, *Lucas* againſt *Armſtrong*, *Mich.* 12 *Geo.* 2. was quoted. And the Court held, That by the Statute 3 *Jac. cap.* 8. Bail was required. If the Bond had been generally for Performance of Covenants in an Indenture, and the only Covenant in that Indenture for Payment of Money, Bail muſt be given on Writ of Error. Time was given to Defendant to put in Bail. *Hayward* for Plaintiff.

Poor *againſt* Coulthurſt. Hilary 20 Geo. 2.

DEfendant, who had been arreſted by a *Teſtat' Capias* from *London* into *Devonſhire*, returnable the firſt of laſt Term, now perfected Bail, and moved to ſtay Proceedings on the Bail-Bond, on Payment of Coſts; inſiſting, that as no Declaration in the original Action had been delivered *de bene eſſe*, Plaintiff had not loſt a Trial, and therefore the Bail-Bond ought not to ſtand as a Security. The Court held, That as Plaintiff might have tried his Cauſe laſt Term without a Declaration *de bene eſſe*, he has been delayed of Trial. Rule, by Conſent, to ſtay Proceedings on Bail-Bond on Payment of Coſts, Pleading the General Iſſue, and Taking ſhort Notice of Trial at the Sitting after Term; Bail-Bond to ſtand as a Security, and whenever that is the Caſe, it is underſtood that Plaintiff may at Pleaſure ſign Judgments in the Actions on the Bail-Bond. *Bootle* for Defendant; *Prime* for Plaintiff.

Peeſton *againſt* Tracy, Eſq; 4th *Febr.*

DEfendant arreſted laſt Term, but no Bail-Bond taken; the Sheriff being called on, returned a *Cepi Corpus*; and being ſerved with a peremptory Rule to bring in the Body, Bail was yeſterday perfected in Court; the Rule to bring in the Body diſcharged.

Note; The Time for bringing in the Body being expired, and Plaintiff intitled to move for an Attachment before the Bail perfected, the Sheriff was ordered to pay the Coſts of the Application againſt him. *Hayward.*

Baſkerville, Eſquire, *againſt* Chaffey. Eaſter. 20 Geo. 2.

In Error. OBjected to one of the Bail, that he was a Palace Court Officer; but over-ruled, and the Bail allowed. The Rule of this Court to prevent Sheriffs Officers, and other Perſons concerned in the Execution of Proceſs, from being Bail, extends only to Proceſs of this Court, whereon Defendants having been bailed by the Officers who arreſted them, were greatly impoſed on and abuſed. *(Abſente Capitali Juſtic')* *Agar* for Plaintiff in Error; *Hayward* for Defendant in Error.

Caſtell *againſt* Grave, one, &c. on a Bail-Bond. Mich. 21 Geo. 2.

THE Court ordered all Proceedings to be ſtayed; it appearing, that the Defendant in the original Action died before Judgment could have been obtained thereon againſt him. *Bootle* for Defendant; *Prime* for Plaintiff.

Evening *againſt* Spoarman. Mich. 22 Geo. 2.

DEfendant was arreſted 26th *May* 1747, and gave a Bail-Bond, but died without putting in Bail above. Plaintiff lay ſtill till twelve Months after the Arreſt, and then took an Aſſignment of and put the Bail-Bond in Suit. The Bail moved to ſtay Proceedings, and obtained a Rule to ſhew Cauſe, which was now diſcharged; it appearing, that if Defendant had put in Bail in Time, he lived long enough for Plaintiff to have

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proceeded to Trial, and to have had Judgment and Execution in his Life-time. *Poole* for the Bail; *Bootle* for the Plaintiff.

Holland, an Attorney, *againſt* Ereſkine. Same Term.

RULE to ſhew Cauſe why a Common Appearance ſhould not be accepted for Defendant, as a Feme Covert, diſcharged. Where the Marriage is clearly made out, the Court will order a Common Appearance; but in this Caſe, Defendant appears to have acted as a Feme-Sole for twelve Years, which makes the Matter doubtful. *Prime* for Defendant; *Bootle* and *Poole* for Plaintiff.

Eaſter 22 Geo. 2.

THE Producing a Duplicate of Defendant's Diſcharge as a Fugitive, held ſufficient; and Affidavits on Plaintiff's Part, to ſhew that Defendant was not abroad beyond the Seas 1ſt *January* 1747, refuſed to be read. This ſhould have been objected at the Seſſions: It may be pleaded, but cannot be entered into on the Queſton of, Bail or No Bail? Rule made in the Treaſury for a Common Appearance.

Swarbreck *againſt* Wheeler. Mich. 23 Geo. 2.

AFfidavit for Bail made by a third Perſon, That Defendant was indebted to Plaintiff 500 *l.* and upwards, as appears by a ſtated Account, atteſted by the Conſul at *Oporto*. Objected to by Defendant as inſufficient; but the Defect being ſupplied by a ſubſequent Affidavit of Defendant's Acknowledging the ſtated Account, Rule to ſhew Cauſe why a Common Appearance, was diſcharged. *Prime* for Defendant; *Willes* for Plaintiff.

Knight

Knight *againſt* Remy.

DEfendant having produced his Certificate as a Bankrupt, allowed and confirmed, moved for a Common Appearance in this Action, which was Debt on Bond for Payment of Money by Inſtallments, ſome of which were not payable till after the Bankruptcy; and the Queſtion was, Whether this be a Debt diſcharged by the Certificate, or not? After the firſt Default of Payment, the Bond is forfeited, and the Penalty is the Debt in Law. The Court will not enter nicely into the Matter on Bail or No Bail. Rule for Common Appearance. *Prime* for Defendant; *Willes* for Plaintiff.

Fowlis, Eſquire *againſt* Groſvenor. Hilary 23 Geo. 2.

THE *Capias ad reſpondendum* was returnable 15 *Mart.* laſt. 4th *Dec.* Bail was put in before a Judge. 7th *Dec.* Plaintiff excepted againſt the Bail, and 15th *Dec.* put the Bail-Bond in Suit for Want of a Juſtification within four Days after Exception, before a Judge at his Chambers, or Time obtained to perfect Bail; inſiſting, that though the Exception was in Time of Vacation, Defendant ought to have done every Thing in his Power towards perfecting the Bail. The Court held, That a Juſtification before a Judge is no Juſtification, but by Plaintiff's Conſent. That by the General Rule of Court, requiring Bail to be perfected within four Days after Exception, muſt be meant the next four Days in Term. The Bail in this Caſe were juſtified in Court the ſecond Day of this Term. The fair Way would be to give Notice of a Juſtification in Court within four Days after Exception, but 'tis not requiſite, two Days Notice is ſufficient. Rule abſolute to ſtay Proceedings on Bail-Bond, without Coſts. *Prime* for Defendant; *Leeds* for Plaintiff.

Goſwell, one, &c. *againſt* Hunt. Eaſter 23 Geo. 2.

DEfendant having put in Bail before a Judge, Plaintiff gave Notice of an Exception againſt them, (but did not enter his Exception on the Bail-piece) and for Want of a Juſtification in Court, ſerved the Sheriff with a peremptory Rule to bring in the Defendant's Body within ſix Days, for Want whereof Plaintiff moved for an Attachment againſt him. The Court held, That an Exception in Writing on the Bail-piece, and Notice thereof to Defendant's Attorney, are both neceſſary; and that for Want of the former, the Bail (which had ſtood more than twenty Days without an Exception entered) was become abſolute, and ordered Proceedings againſt the Sheriff to be ſtayed. *Willes* for Plaintiff.

Hooper *againſt* Comings.

THE Bail, who reſided in the Country, entered into Recognizance before Mr. Juſtice *Birch* in Town, and being excepted againſt, ſent up an Affidavit of Sufficiency. They were permitted to juſtify by that Affidavit, without attending perſonally. No Oppoſition made on Plaintiff's Part. *Poole* for Defendant.

Price and another *againſt* Street.

PLaintiff ſerved *Cooper*, late Sheriff, with peremptory Rule to bring Defendant's Body into Court within ſix Days; whereupon Defendant put in Bail, and juſtified *de bene eſſe* before a Judge, and for want of an Exception within twenty Days, the Bail became abſolute. Plaintiff inſiſted, that tho' no Exception was taken, yet the Bail ought to have been perfected by Juſtification in Court (which is Bringing in the Body) within the ſix Days limited by the Rule: But the Court held otherwiſe. Rule on late Sheriff to ſhew Cauſe why Attachment, diſcharged. *Bootle* for late Sheriff; *Willes* for Plaintiff.

Baxter *againſt* Overton. Hil. 24 Geo. 2.

DEfendant produced a Duplicate of his Diſcharge as an inſolvent Debtor, and after having put in Bail before a Judge, moved in the Treaſury to be diſcharged on entering a Common Appearance; which, upon hearing the Attornies on both Sides, was granted, and the Bail-piece ordered to be vacated. Defendant being conſidered as in Cuſtody of his Bail, and his Perſon being by the Statute to be diſcharged.

Hutchinſon *againſt* Hardcaſtle. Eaſter 24 Geo. 2.

WRIT returnable laſt *Michaelmas* Term; Bail was taken before a Commiſſioner in the Country; Notice thereof given to Plaintiff's Attorney there, and the Bail-piece tranſmitted to *London* to Defendant's Agent; he incautiouſly filed it with the Filazer, (who as incautiouſly received it, without firſt being allowed by a Judge.) Plaintiff lay by till after laſt Aſſizes, and then took an Aſſignment of, and put the Bail-Bond in Suit. The Court ordered the Filazer to attend a Judge for his *Allocatur*; gave Plaintiff Leave to except againſt the Bail, if he thought fit, and ſtayed Proceedings on the Bail-Bond upon Payment of Coſts. Plaintiff's Counſel urged, that he had been delayed, and loſt a Trial; but ſuch Delay is through his own Laches; he might have put the Bail-Bond in Suit much earlier than he did. *Prime* and *Willes* for Defendant; *Bootle* for Plaintiff.

Roe, on the Demiſe of Fenwick, and others, *againſt* Pearſon, in Ejectment in Error. Eaſter 24 Ge. 2.

MOtion to ſtay Proceedings by Defendant in Error for Want of better Bail, Plaintiff in Error having entered into a Recognizance, purſuant to the Statute 16 & 17 *Car.* 2. in the Value of two Years meſne Profits only, and double Coſts. Objected, That by the Practice of this Court, the Recognizance ought to be in the Value of two Years and a Half meſne Profits, though in the King's Bench two Years Value is ſufficient. The Statute leaves the Sum to the Diſcretion of the Court, and gives a Writ of Enquiry as to meſne Profits and Damages. The Court thought two Years Value a reaſonable Sum, and ſtayed Proceedings on the Judgment pending the Writ of Error; made a general Rule, that for the future theſe Recognizances ſhall be taken in the Value of two Years Profits and double Coſts. *Bootle* for Defendant; *Poole* for Plaintiff in Error.

Ray and others *againſt* Huſſey.

RULE made abſolute (on Affidavits of Service, no Cauſe being ſhewn to the contrary) for Leave to enter an *Exoneretur* on the Recognizance of Bail. Defendant, pending the Action having become a Bankrupt, and obtained his Certificate allowed and confirmed. *Bootle* for Defendant.

N. B. This had been done in the King's Bench; 'tis a new Practice, introduced to diſcharge the Bail in a ſummary Way, without putting them to the Trouble and Charge of ſurrendering the Principal, as formerly; though by the Bankrupt Act 5 *Geo.* 2. Power is given to a Judge to order the Bankrupt, after ſuch Surrender, to be diſcharged.

Wilſon and others *againſt* Lafortune. Trin. 24 & 25 Geo. 2.

PLaintiff, after a *Ca. ſa.* returned againſt the Principal, filed a Bill in an Action of Debt on the Recognizance againſt *Wall*, an Attorney, one of the Bail firſt put in, (though after Exception two other Bail juſtified in Court) and ſued out Proceſs againſt *C. D.* another of the Bail, on whom the Proceſs was ſerved two Days only before the Return, (though four Days are requiſite.) On Motion of *Bootle* for *Wall* and *C. D.* the Court made a Rule for Plaintiff to ſhew Cauſe why Proceedings againſt *Wall* and *C. D.* ſhould not be ſtayed. On ſhewing Cauſe, the Court held, in anſwer to an Objection of Plaintiff's Counſel, that the Affidavit was properly intitled in this the Original Action. That the proceeding againſt *Wall* as an Attorney, by Bill, of which he complained, was not irregular; but that other Bail having juſtified, he was diſcharged. Rule abſolute to ſtay Proceedings againſt *C. D.* becauſe he was not ſerved with the Writ in time; and againſt *Wall,* becauſe other Bail had juſtified as aforeſaid. And the Court ordered *Wall*'s Name to be ſtruck out of the Bail-piece, and the Entry of the Recognizance to be amended accordingly, and gave *Wall* his Coſts. *Willes* for Plaintiff.

Norton *againſt* Lutwidge. Mich. 25 Geo. 2.

MOtion by Defendant for a Common Appearance, on producing a Duplicate of his Diſcharge at the Seſſions of the Peace, under the late Statute, as a Fugitive for Debt. Plaintiff objected, that Defendant was an *Iriſhman*, and inſtead of flying from his native Country, fled to *Ireland*, as mentioned in the Duplicate; and that *Ireland* is not within the Words of the Statute, (' Foreign Parts.') The Court did not think it neceſſary to give an Opinion whether Defendant was within the Statute, or not; or whether, on the Face of the Duplicate, the Seſſions had exceeded their Juriſdiction. The Quarter-Seſſions is to determine as to immediate Liberty, afterwards the Court, or a Judge, are to diſcharge Defendant on producing his Duplicate. Plaintiff may put the Point on Trial, but Defendant muſt not remain *in vinculis* till the Determination. Rule abſolute for a Common Appearance. *Wynne* for Defendant; *Willes* for Plaintiff.

Sanders, Eſquire, late Sheriff, *againſt* Spincks. Mich. 25 Geo. 2.

AN Action was brought in 1748 by *Chetham*, the original Plaintiff, againſt *Sibrell* the original Defendant; ſoon after which *Sibrell* became a Bankrupt, and obtained his Certificate allowed and confirmed: Notwithſtanding which, the Bail-Bond was lately put in Suit, in the Sheriff's Name, againſt *Spincks* the preſent Defendant, one of the Bail, and on his Application a Rule was made to ſhew Cauſe, and afterwards abſolute, to ſtay the Proceedings. *Draper* for Defendant; *Bootle* for Plaintiff.

Mayo *againſt* Weaver. Eaſter 25 Geo. 2.

RULE was obtained by Defendant to ſhew Cauſe why Plaintiff ſhould not ſtrike out the Exception entered againſt the Bail, in order that Defendant might render himſelf in their Diſcharge; Defendant inſiſting, that as Plaintiff had not marked

his

his Declaration to be delivered *de bene eſſe*, he had accepted the Bail: But it appearing, that by a Judge's Order ten Days Time had been given Defendant to perfect Bail, Plaintiff to declare without Prejudice, Defendant to rejoin *gratis*, and to take Notice of Trial for the laſt Sitting within laſt *Michaelmas* Term; in Conſequence of which Order Iſſue was joined, the Cauſe entered, made a *Remanet*, and tried at the Sitting after laſt *Michaelmas* Term, when Plaintiff had a Verdict: The Rule was diſcharged. Defendant ſhould have perfected his Bail in time, (which he has not done) and then might have rendered if he had thought fit. *Willes* and *Agar* for Defendant; *Prime* for Plaintiff.

Whitehead, Adminiſtrator of Reeveley, *againſt* Cale, Bail for Stewart. Hil. 25 Geo. 2.

JUdgment was entered againſt the principal Defendant, at the Suit of Plaintiff's Inteſtate, in *Michaelmas* Term 1741, after a Writ of Enquiry executed in the Vacation preceding. In 1748 the principal Defendant retired to *Bruges* in *Flanders*. In *Hilary* Term 1748 the Judgment was revived by Plaintiff, by one *Scire facias* returned *Nichil habet*; and in *Eaſter* Term following a *Capias ad Satisfaciendum* was returned *Non eſt inventus*; ſoon after which the principal Defendant died abroad; a *Capias ad reſpondendum* on the Recognizance was ſued out againſt *Gale*, one of the Bail, returnable 8 *Hilary* 1750, and he applied to ſtay Proceedings, becauſe by the Inteſtate's and Plaintiff's Delay of proceeding againſt the Bail till after the Death of the Principal, *Gale* was prevented from ſurrendering the Principal Defendant to the *Fleet* in Diſcharge of his Bail, which he would have done, had the Bail been recently proceeded againſt in the Principal's Life-time. After this Matter fully debated by Counſel, and Conſideration had, the Court determined, That they could not relieve the Bail on Motion. A Render of the Principal after a *Capias ad Satisfaciendum* returned, is not a good Plea, and no Inſtance can be ſhewn that any of the Courts of *Weſtminſter* have relieved Bail on Motion, where the Principal died after a *Ca. ſa.* returned. Though by the Rules and Practice of the Court, Indulgence has been given to Bail to render the Principal till the *quarto die poſt* of the firſt *Scire facias*, if returned *Scire feci*; or the *Alias Scire facias*, if returned *Nichil habet*; or the *quarto die* *poſt* of a *Capias ad reſpondendum* on the Recognizance, ſerved four Days before the Return. Yet this extends only to Caſes where the Principal can be rendered, and not to Caſes where by his Death a Render is become impoſſible. The Recognizance is abſolutely forfeited immediately after a *Ca. ſa.* returned; and if the Principal dies afterwards, before a Render, the Bail are fixed; the deferring of the Render till after the Return of the *Ca. ſa.* is at the Riſque and Peril of the Bail; they ought to render at the Ruturn, tho' where the Principal is to be had, and is rendered afterwards, within the Time allowed by the Practice of the Court, yet the Bail have firſt been guilty of a Default; where the Principal is not to be had, the Bail muſt ſuffer; the Enlargement of the Time is Indulgence only where Plaintiff can be put in the ſame Condition by a Render, as if it had been at the Return of the *Ca. ſa.* but where a Render cannot be made, the Election of the Bail is over, 'tis not in the Power of the Court to relieve, though Favour of Bail is Favour of Liberty; and 'tis probable this Court may make a general Rule to ſpeed Plaintiffs, that Bail for the future may know when they are diſcharged; *vide Cro. Jac.* 91. *Williams* againſt *Vaughan*. Same Book 165. *Timperly* againſt *Coleman*. 1 *Salk.* 101. 6 *Mod.* 132. *Rule of Court* 1654. 1 *Roll's Abr.* 336. 2 Ld. *Raymond* 1452. *Barry* againſt *Perry*. 1 Sir *Wm. Jones* 29. *Sparrow* againſt *Southgate*. *Mich.* 1 *Geo.* 2. *King* againſt *Yates*. Rule to ſhew Cauſe why Proceedings ſhould not be ſtayed, diſcharged. *Prime* for Defendant; *Willes* and *Poole* for Plaintiff.

Garth *againſt* Green. Trin. 25 & 26 Geo. 2.

RULE to ſhew Cauſe why Recognizance of Bail ſhould not be diſcharged, Plaintiff not being intitled to Bail by the Courſe of the Court, in this Action of Debt on Judgment, becauſe Bail was given in the Original Action. The Rule was made abſolute, no Cauſe ſhewn to the contrary. *Prime* for Defendant.

Reynoldſon *againſt* Blades, (for Covenant broken) in the Treaſury. Eaſter 26 Geo. 2.

PLaintiff made an Affidavit, That Defendant entered into an Agreement with him in Writing, and covenanted to pay him 315*l.* for the Purchaſe of Land; that Plaintiff has been always ready to convey the Eſtate on Payment of the Purchaſe-Money, but Defendant refuſes to pay and to take the Eſtate, whereby Plaintiff ſwears himſelf damnified 40*l.* Common Appearance ordered. No previous Application to a Judge. Damages uncertain. Old Caſes, *Fleetwood* againſt *Poictier*, *&c.* are not to be followed. Where Damages can be reduced to a Certainty, as in Covenant for Payment of Money, or where a Tenant covenants with his Landlord to pay a certain Sum for every Acre of Land he plows up, or the like, Plaintiff is intitled to Bail, otherwiſe not, eſpecially without Judge's Order previous. 'Tis not reaſonable that Defendant ſhould be held to Bail for ſuch Damages as Plaintiff fancies he has ſuſtained, and is pleaſed to ſwear to.

Julian *againſt* Shobrooke. Mich. 27 Geo. 2.

MOtion on Behalf of Defendant's Bail, for Leave to make out a new Bail-piece, the old one, taken before a Commiſſioner in the Country, not being to be found on the Filazer's File, on Affidavit of Mr. *Limbrey*, Defendant's Agent, of its having been allowed and filed in *May* 1751, by his late Clerk deceaſed, as appeared by the Clerk's Account; and, as *Limbrey* believed, Defendant had been ſome Days in Cuſtody of his Bail, but could not be ſurrendered for want of the Bail-piece. Defendant refuſed to conſent to the filing of a new Bail-piece, or the Bail's entering into a new Recognizance, inſiſting that the Bail (who were preſent in Court) had Effects of his in their Hands ſufficient to ſatisfy Plaintiff's Demands; which the Bail (examined on Oath by the Court) having denied, and it appearing that they originally became Bail for Defendant at his Requeſt, the Court gave them Leave to put in Bail *de novo*; which they did, and ſurrendered Defendant to the *Fleet* Priſon in their Diſcharge. *Willes* for the Bail; *Poole* for the Defendant.

Stapleton *againſt* The Baron de Stark. Hil. 27 Geo. 2. 1754.

PLaintiff made an Affidavit for Bail, That Defendant was indebted to her 1000 *l.* and upwards, for Money lent; whereupon Defendant having been arreſted, moved to be diſcharged on entering a Common Appearance, ſhewing the Court by Affidavit, That Defendant had given promiſory Notes for the Plaintiff's whole Demand, ſome of which were become due and payable, and thoſe Notes had been put in Suit in the Court of King's Bench, by Action ſtill pending; that the Reſidue of the Debt for which this Action was brought, is ſecured by Notes not due or payable. Plaintiff's Counſel admitted the Fact, but produced an Affidavit from Plaintiff, ſhewing, that ſhe had good Reaſon to think the Defendant would ſuddenly leave the Kingdom, and therefore ſhe cauſed him to be arreſted for the Reſidue of her Debt for Money lent, which ſhe was adviſed ſhe might do, though ſhe had Defendant's Note for it, her original Debt for Money lent not being extinguiſhed, as it might have been had ſhe taken a Bond, or higher Security. The Court thought the Matter improper to be diſcuſſed on this Motion. Rule to ſhew Cauſe why Common Appearance, diſcharged. *Willes* and *Draper* for Defendant; *Prime* for Plaintiff.

Whitfield *againſt* Whitfield.

THIS Action was brought (as appeared by Plaintiff's Affidavit) on Defendant's Bond to indemnify Plaintiff againſt Securities which he had entered into for Defendant, but Plaintiff ſwore to no certain Dampnification, nor to his being arreſted on any of theſe Securities, though Actions had been brought thereon againſt him, and he was obliged to abſcond. The Court declared, that to hold to Bail in Actions on Bonds to ſave harmleſs, *&c.* as well as in Actions of Covenant, Plaintiff muſt ſwear poſitively and certainly how, and for how much, he is dampnified; the Court cannot take it by Implication. Rule abſolute for a Common Appearance. *Willes* for Defendant; *Poole* for Plaintiff.

Barnard *againſt* Mordaunt, Eſquire. Eaſt. 27 G c. 2.

DEfendant, a Member of the laſt Parliament, having been arreſted and held to Bail before the Expiration of forty Days *(Privilege claimed by the Commons)* next after the Diſſolution, applied to have the Bail-Bond delivered up. In 2 *Lev.* 72. the Privilege is ſaid to be twenty Days before and after Seſſion and Prorogation. According to *Pryn* the Wages to Parliament Men continue no longer than three Days after the Parliament is up. Vide *Pitt's Caſe*, *Comyns* 444. By Conſent Rule abſolute for delivering up Bail-Bond, on entring common Appearance. *Prime* for Defendant; *Draper* for Plaintiff.

Lovibond *againſt* Faikney. Trin. 27 & 28 Geo. 2.

DEfendant put in Bail † 25th *May* (two Days before the End of laſt Term;) the Day after the Term (28th *May)* Plaintiff excepted againſt the Bail, and for want of Juſtification before a Judge, took an Aſſignment of, and proceeded on the Bail-Bond. Defendant 8th *June* (after the Bail-Bond aſſigned) gave Notice to juſtify his Bail in Court on the firſt Day of this Term, which he did accordingly, and then applied for Stay of Proceedings on the Bail-Bond. Rule abſolute for that Purpoſe without Coſts. *Prime* for Defendant; *Willes* for Plaintiff.

Filewood *againſt* Smith. Mich. 29 Geo. 2.

A Palace-Court Officer offered to juſtify himſelf in Court as one of Defendant's Bail; Plaintiff objected, that no Sheriff's Officer, Bailiff, or other Perſon concerned in the Execution of Proceſs, can be Bail by the general Rule of *Mich.* 6 *Geo.* 2. Defendant anſwered, that, by a Caſe *Baſkerville*, Eſq; againſt *Chaffey*, in Error, *Eaſt.* 20 *Geo.* 2. The Court had determined that ſaid Rule related only to Bailiffs executing Proceſs *of this Court*. The Court exploded the Doctrine of that Caſe, which was determined (as thereby appears) in the Abſence of the Lord Chief Juſtice, and rejected the Bail offered. They held that the Rule extends to all Bailiffs, Officers, and others concerned in the Execution of Proceſs. The Rule was made for the Benefit of Plaintiffs, not merely to prevent Impoſitions and Abuſe on Defendants, as in ſaid Caſe mentioned. An antient Rule of this Court *Mich.* 1654. ſays that no Attorney ſhall be Bail, and a Modern Rule *Mich.* 6 *Geo.* 2. ſays that no Attorney of this or any other Court, or any Perſon practiſing as ſuch, ſhall be Bail; the Rule is the ſame with Reſpect to Officers executing the Proceſs of this and all other Courts. *Willes* for Plaintiff; *Davy* for Defendant.

French *againſt* Knowles. Hil. 29 Geo. 2.

DEfendant, after a Judge's Order for Time to put in and perfect Bail, put in Bail, and ſurrendered himſelf to the *Fleet* in Diſcharge of his Bail. Plaintiff's Attorney apprehending the Surrender, without previouſly perfecting Bail by a Juſtification, to be irregular, proceeded upon an Aſſignment of the Bail-Bond; but the Court held ſuch Proceeding to be wrong. Before a Surrender Defendant is delivered to his Bail, and ſuppoſed to be in their Cuſtody; by the Surrender the Cuſtody is altered, and Defendant is in Priſon; the Worth and Subſtance of the Bail, who by the Surrender are diſcharged, is totally immaterial. Rule abſolute to ſet aſide the Proceedings on the Bail-Bond without Coſts. *Davy* for Defendant; *Willes* for Plaintiff.

Woodnott *againſt* Lilly. Eaſter 29 Geo. 2.

RULE made abſolute to ſet aſide Proceedings on Bail-Bond with Coſts. The *Capias* in the original Action was returnable 8 *Pur.'* laſt. Defendant put in Bail above laſt Vacation in Time; Plaintiff excepted againſt the Bail; whereupon Defendant's Attorney applied to Plaintiff's Attorney to know whether he would accept a Juſtification at a Judge's Chambers or not, to which Plaintiff's Attorney gave no Anſwer; but for want of ſuch Juſtification took an Aſſignment of the Bail-Bond, and put the ſame in Suit. Defendant gave Notice of Juſtification in

Court for the firſt Day of this Term; but the Bail not then attending, Defendant obtained a few Days Time to perfect Bail, and then juſtified in Court where the Exception againſt Bail is in Vacation Time, or ſo late in Term that Defendant cannot regularly give Notice, and juſtify within ſuch Term, he has by the Courſe of the Court Time to juſtify 'till the 4th Day of the Term next ſucceeding, (incluſive.) A Juſtification in the interim before a Judge at his Chambers is not neceſſary, 'tis never of any Uſe, unleſs where Plaintiff's Attorney to forward the Cauſe, as in this Caſe he might have done, conſents to accept it (when offered) abſolutely in the ſame Manner as if in Court. *Vide Fowlis*, Eſquire, againſt *Grovenor*, *Hil.* 23 *Geo.* 2. *Wilſon* for Defendant; *Davy* for Plaintiff.

Morley Aſſignee *againſt* Carr. Same *againſt* Delany.
Eaſter 29 Geo. 2.

ON a Bail-Bond made for the Appearance of *Dowdall*, The *Capias* in the original Action was returnable the firſt Return of laſt *Hilary* Term. Defendant obtained Time by ſeveral Orders to perfect Bail 'till the laſt Day of that Term, taking Notice of Trial for the Sitting after Term in *Middleſex*; but Bail not being perfected, the Bail-Bond was aſſigned and put in Suit. *Dowdall* the Defendant in the original Action died 8th *April*; the preſent Defendants applied to the Court to ſtay Proceedings on the Bail-Bond upon Payment of Coſts; *Dowdall* dying before Judgment could have been obtained againſt him, and a Rule to ſhew Cauſe was made; upon ſhewing Cauſe the Rule was diſcharged, the Court being of Opinion that Plaintiff had been delayed if Defendant had perfected Bail in Time; Plaintiff might have tried the original Action at the Sitting after laſt Term, and by the Statute 17 *Ch.* 2. *Ch.* 8. might have entred Judgment after *Dowdall*'s Death. *Davy* for Defendant; *Prime* for Plaintiff. *Per Cur'*: Defendant *Dowdall*'s Adminiſtratrix ſhall be let in to try the Merits of the original Action if ſhe thinks fit, but this ſhe did not chooſe.

Norman *againſt* Beard.

A Former Action was brought by Plaintiff and his Wife, wherein Defendant was arreſted, and impriſoned for want of Bail, which Action was diſcontinued, and Defendant charged *de novo* in Cuſtody. Actions. Plaintiff only (without his Wife) for the ſame Sum, and Cauſe of Action. Rule abſolute for common Appearance, and Superſedeas. *Davy* for Defendant; *Hewitt* for Plaintiff.

Smithſon *againſt* Johnſon. Trin. 29 & 30 Geo. 2.

THIS was an Action brought by Plaintiff againſt Defendant, upon Defendant's undertaking to indemnify Plaintiff for becoming Bail for him in a Cauſe in this Court 21ſt *November* 1754, wherein Judgment was obtained in *Hilary* Term 1755, and a *Ca. Sa.* iſſued againſt the Principal teſted, 12 *February* returnable, *tres Paſche (20 April)* 1755, which being returned *Non invent.* and the Recognizance of Bail then forfeited, Proceedings were had againſt Plaintiff as Bail, ſo far that a *Fi. fa.* againſt his Goods was executed. A Commiſſion of Bankrupt iſſued againſt Defendant 17th *April* 1755, whereupon he was declared a Bankrupt Defendant now moved for a common Appearance, urging that he having delivered up all his Effects for the Benefit of his Creditors ſhould not be held to Bail, and that Plaintiff ought to prove his Debt, and come in as a Creditor for his Dividend under the Commiſſion; but the Court were of Opinion, That though by Statute 7 *Geo. C.* 31. Debts from Bankrupts ſecured by promiſſory Notes, and payable at future Days may be proved, and Dividends received, deducting a Rebate of Intereſt and Diſcount, and by Statute 19 *Geo.* 2. *C.* 32. the Obligees in *Bottomree & Reſpondentia* Bonds, and the Aſſured in Policies of Inſurance are provided for. Yet this Caſe wherein the Cauſe of Action did not accrue 'till after the Bankruptcy, and where the Money was to become due upon a Contingency is not within any of the Statutes concerning Bankrupts, and conſequently Plaintiff cannot be relieved under the Commiſſion. Defendant muſt be held to Bail. Rule to ſhew Cauſe why common Appearance diſcharged. *Poole* for Defendant; *Hewitt* for Plaintiff;

vide Tully againſt *Sparks*, 2d *Strange* 867. *Crookſhanks* againſt *Thornſon*, 2d *Strange* 1160, 2d *Peer Williams* 497.

Barnſley *againſt* Archer.

DEfendant being arreſted for a Debt under 20*l.* applied to be diſcharged as a Seaman in his Majeſty's Service under Statute 1 *G.* 2. *C.* 14. On Plaintiff's Part it was ſhewn, That Defendant was Armourer on board the *Wager* Man of War, and urged, That he ought not to be conſidered as a private Seaman; but as an Officer, and conſequently is not within the Statute: To this it was anſwered for Defendant, that all theſe *petit* inferior Perſons, (not Commiſſion Officers) Armourers, Gunners, *&c.* are liſted as common Seamen, and are no otherwiſe diſtinguiſhed from the reſt than by better Pay; but are liable to be diſrated, and reduced, and do Duty as common Seamen at the Captain's Pleaſure. Referred to one of the Judges to be conſidered, and determined at his Chambers in the Vacation. Mr. Juſtice who afterwards made an Order to diſcharge Defendant on entering a common Appearance. *Willes* for Defendant; *Prime* for Plaintiff.

Hodgſon Aſſignee of the Sheriff *againſt* Michell. Eaſt. 33 Geo. 2.

UNDER Colour of a pretended Agreement by Plaintiff to ſtay Proceedings, Defendant had applied to ſtay the ſame; but the Agreement being denied the Rule was diſcharged: Then Defendant deſired to be let in to try the Merits of the Original Action on Payment of Coſts, which was granted, adding (Plaintiff having been delayed of a Trial) that the Bail-Bond ſhould ſtand as Security, Plaintiff had applied for Leave to amend his Declaration on the Bail-Bond, which Defendant inſiſted by Rule of the Court was not amendable; but that is a Miſtake, there is no ſuch Rule, Declarations in Actions on Bail-Bonds may be amended as well as any other Declarations. The Court perhaps may have refuſed in ſome Inſtances to grant Leave to amend Writs of *Scire facias* againſt Bail, where by ſuch Amendment the Bail might be deprived of the Advantage of ſurrendering the Principal, as perhaps they might do in Caſe of the Faulty *Sci.*

fa. quaſhed, and a New one ſued out. *Poole* and *Hewitt* for Defendant; *Nares* and *Davy* for Plaintiff.

Beckman *againſt* De Witt. Trin. 33 Geo. 2.

AFTER a Trial in the Court of *King's Bench*, and Plaintiff non-ſuited, he brought a new Bailable Action in this Court for the ſame Cauſe, wherein a common Appearance was ordered to be accepted.   for Defendant;   for Plaintiff.

Springett *againſt* Roeloffse. Another Plaintiff *againſt* the ſame. A Third Plaintiff *againſt* the ſame.

AN Affidavit made on a Sheet of Treble Six-penny ſtamped Paper, That Defendant was indebted to the Firſt Plaintiff in a Sum of Money, and ſo to the Second and Third Plaintiff, and thereon Defendant was arreſted in Three ſeparate Bailable Actions, all founded on this one Affidavit which was held to be irregular; there ought to have been Three diſtinct Affidavits, one in each Cauſe: This Affidavit made in three Cauſes is not applicable to any one of them. Rules for common Appearances made abſolute. *Hewitt* Defendant; *Davy* for Plaintiffs.

Bradley *againſt* Pinchbeck. Hil. 32 Geo. 2.

EXception 14th *February* 1758, Bail juſtified in Court third Day within laſt *Eaſter* Term, ſame Bail as in Bail-Bond, Plaintiff ſhew Cauſe why Proceedings on Bail-Bond (lately put in Suit) ſhould not be ſtayed with Coſts, Bail cannot juſtify in Vacation unleſs by Conſent, four Days to juſtify in full Terms are allowed after Exception taken in Vacation Time. Rule abſolute, *Sans* Coſts.

Crutchfield and others *againſt* Sewords. Eaſter 23 Geo. 2.

DEfendant was arreſted in the Original Action by a common *Capias* in *Kent*, whereupon he put in, and juſtified Bail in Court, Plaintiff declared in *London*, (not in *Kent*) whereby he relinquiſhed and loſt his Bail, and after Judgment obtained in the Original Action, brought an Action of Debt on that Judgment, wherein Defendant being again arreſted, put in, and juſtified Bail in Court 2d *May*, the Firſt Day of this Term; 4th *May* Defendant moved, and obtained a Rule to ſhew Cauſe why the laſt Recognizance of Bail ſhould not be diſcharged, and why a common Appearance ſhould not be accepted in lieu thereof, and upon ſhewing Cauſe, and hearing Counſel on both Sides, the Rule was this Day (*May* 8th) made abſolute. The eſtabliſhed Practice is, that where Plaintiff has Bail in the Original Action, he ſhall have none in his Action on Judgment; where Plaintiff has no Bail in his Original Action, he ſhall have Bail in his Actiion on Judgment; but in this Caſe Plaintiff by his own Act gave up Bail in the Original Action, and therefore ſhall not compel Defendant to give Bail a Second Time, (Actions of Debt on Judgment are not to be encouraged after Judgment, Execution ſhould follow, and not a freſh Suit.) By the general Rule, 8 *Geo.* 2. It is ordered that no Priſoner diſcharged, or ordered to be diſcharged by *Superſedeas* for Want of Proſecution, ſhall be held to Bail in Debt on Judgment in the Cauſe wherein he was ſuperſeded, which is ſimilar to the preſent Caſe. *Quatuor pedibus currit*, there if the Priſoner is diſcharged 'tis Plaintiff's own Fault, here the Bail in the Original Action was diſcharged by Plaintiff's own Fault. *Hewitt* for Defendant; *Davy* for Plaintiffs.

Horſley *againſt* Somers. Trin. 32 & 33 Geo. 2.

MOtion by *Davy* to vacate Bail taken under an Affidavit made by Plaintiff, who had been convicted of Perjury on Statute 5 *Eliz.* Record of Conviction produced, the Rule to ſhew Cauſe was diſcharged, though Plaintiff cannot be a Witneſs, yet he muſt not be ſtripped of his legal Remedy to recover his juſt Debts. *Davies* againſt *Carter*, *Salk.* 461. *Kearney* againſt *Walker* and *Fuller*, *Robins* againſt *Jones*, both in *Banco Regis*.

Phillimore and another Executors *againſt* Moore.

ON Bail-Bond, Rule to ſhew Cauſe why Proceedings ſhould not be ſet aſide with Coſts, Defendant having ſurrendred himſelf to the *Fleet Priſon*, in Diſcharge of his Bail before the Bail-Bond was put in Suit, objected by Plaintiff that the Surrender being after an Exception againſt the Bail, was irregular and void, for want of a previous Juſtification. The Objection was over-ruled, and the Rule made abſolute without Coſts. *Vide antea French* againſt *Knowles*. *Poole* for Defendant; *Davy* for Plaintiff.

Hay *againſt* Mann.

AN *Ac etiam* was put into the *Capias ad reſpondendum*, which was endorſed for Bail by Affidavit, and Defendant was arreſted, and held to Bail thereon; but by Miſtake in the *Præcipe* for the Writ left with the *Filazer*, no *Ac etiam* was inſerted, for want of which a common Appearance was ordered to be accepted. *Nares* for Defendant; *Davy* for Plaintiff.

How *againſt* Bridgewater, Gent. one of the Attornies, &c. Eaſter 33 Geo. 2.

DEfendant being ſued in this Court, by Bill in an Action of Debt on a Bail-Bond taken on an Arreſt, by Virtue of a *King's Bench* Writ, obtained a Rule to ſhew Cauſe why the Proceedings here ſhould not be ſtayed, inſiſting that the Bail-Bond could be regularly put in Suit only in that Court where the Original Action was brought, and ſo the Court held; Plaintiff's Counſel ſubmitted that Defendant being an Attorney of this Court, and as ſuch entitled to Privilege could be ſued in this Court only; but that is not ſo, Defendant by entring into a Bail-Bond has waived his Privilege, whether ſued jointly or ſeparately. *Davy* for Defendant; *Hewitt* for Plaintiff.

Bland

Compoſition.

Bland *againſt* Featherſtone. Mich. 10 Geo. 2.

ACTION on the Statute of Uſury. Defendant pleaded. Motion *per Draper* for Leave for the Proſecutor to compound on the Statute 18 *Eliz.* which Compoſition without Leave is penal. *Bootle* conſented for Defendant; and a Rule was made purſuant to the Motion.

Coſts and Bills of Coſts.

Hurſt *againſt* Dixon. Mich. 6 Geo. 2.

THE Queſtion was, Whether a ſixth Part of Mr. *Staveley*'s (Plaintiff's Attorney's) Bill of Coſts not being taken off upon Taxation, he ſhould not have his Coſts of Taxation? The Bill amounted to 75*l.* 15*s.* 7*d.* and the Deductions were 7*l.* 3*s.* 10*d.* The Court ordered Plaintiff to pay *Staveley*'s Coſts of Taxation.

Zouch *againſt* Bell. Hill. 6 Geo. 2. (Vide Rule Trin. 13 Geo. 2.)

A Rule *niſi* for Coſts, for not proceeding to execute a Writ of Inquiry of Damages according to Notice, diſcharged as a Thing that never had been done.

Bangs, Executor, *againſt* Bangs.

ACTION brought by Plaintiff for Monies received by Defendant to the Uſe of Plaintiff, as Executor, and upon the Trial Plaintiff was nonſuited; and the Queſtion was, Whether the Plaintiff, being an Executor, ſhould pay Coſts. *Per Cur'*: The Plaintiff ſhall pay Coſts, becauſe he might have brought the Action in his own Right. *Medley* againſt *York*, *Mich.* 6 *Ann.* in *B. R.* in Point cited by Mr. Juſtice *Denton*.

Lee, Executor, *againſt* Knight. Mich. 7 Geo. 2.

AN Action brought upon a Bill of Fees for Buſineſs done by the Plaintiff's Teſtator. Defendant moved by *Glyde* to tax the Bill upon bringing the Money into Court. Denied *per Cur'* in the Caſe of an Executor.

Chriſtmas, an Attorney, *againſt* Chaſe.

A Rule *niſi* was obtained to tax Plaintiff's Bill of Coſts, and upon an Affidavit of Mr. *Benn*, who had been Plaintiff's Agent, that Plaintiff was dead, the Rule was diſcharged. *Birch* for *Benn*; *Hawkins* for Defendant.

Goodright *againſt* Holton. Hil. 7 Geo. 2.

In Ejectment. COSTS in this Cauſe, taxed upon the Common Rule by Conſent, were ordered to be paid by Defendant to the Repreſentative of Leſſor of Plaintiff, who died after the Trial.

Arnold *againſt* Tompſon. Eaſt. 7 Geo. 2.

THIS was an Action of Treſpaſs for entring Plaintiff's Cloſe, and driving and chaſing his Sheep. The Queſtion was, Whether after Judgment, the Damages being under 40*s*. the

Plaintiff ſhould have full Coſts. *Per Cur':* In Caſe of an *Aſportavit*, or if any Injury be done to a perſonal Chattel, the Plaintiff muſt have full Coſts. *Wynne* for Plaintiff; *Chapple* for Defendant.

Britton *againſt* Dickerſon.

DEmand of Coſts to be paid muſt be at the ſame Time the Rule is ſerved.

Carruthers *againſt* Lamb. Mich. 8 Geo. 2.

THIS was an Action of Treſpaſs and Aſſault, and for tearing Plaintiff's Clothes. A general Verdict was found for Plaintiff, Damages under 40*s*. and no Certificate; the Judges in the Treaſury (Sir *George Cooke* doubting) were of Opinion that Plaintiff ought to have full Coſts.

Allen and others *againſt* Maxey.

DEfendant pleaded in Abatement. Plaintiff confeſſed the Plea to be true, and entered a *Nil capiat per Breve*. The Judges in the Treaſury upon hearing the Attornies on both Sides, held that Plaintiff in this Caſe ſhould not pay Coſts. *Salk*. 194. *Garland* againſt *Extend, Mich*. 2 *Annæ*. *Thomas* againſt *Lloyd*, 10 *Gul*. 3. in *B. R.*

Hammond *againſt* Woollmer. Hil. 8 Geo. 2.

A Point of Law reſerved at the Trial was heard and determined by the Court in Favour of Defendant, who afterwards died; and the Queſtion was, Whether Plaintiff ought to pay Coſts to Defendant's Executor by Virtue of the Rule by Conſent, made at *Niſi prius*, and ſince a Rule of Court; and the Court, upon hearing Counſel on both Sides, were of Opinion, that as the Duty did ariſe in Defendant's Life-time, the Coſts muſt be paid to his Executor. *Goodright* againſt *Holton, Hill*. 7 *Geo*. 2. was quoted. *Skinner* for Defendant's Executor; *Eyre* for Plaintiff.

Tomlinſon *againſt* White *and* Pomeroy. Eaſter 8 Geo. 2.

THIS was an Action of Treſpaſs for breaking and entring Plaintiff's Houſe, and breaking his Cellar-door. The Jury upon Trial found for Plaintiff, as to Breaking the Door, Damages 6*d*. Reſidue for Defendants. And the Queſtion was, Whether Plaintiff ſhould have full Coſts, or no more Coſts than Damages. The Court were of Opinion, that Plaintiff ought to have no more Coſts than Damages. The Door was fixed to the Houſe, and no perſonal Chattel. *Dixie* againſt *Somerfield*, *Hill.* 6 *G*. 2. *Ullithorne* againſt *Kirkhouſe*, *Eaſter* 2 *G*. 2. *Chapple* for Defendants; *Eyre* for Plaintiff.

Ray, an Attorney, *againſt* Jackſon.

UPON a Motion in Arreſt of Judgment the Court was of Opinion, that by the Statute of 6 *Geo*. 2. to explain the Statute of 4 *Geo*. 2. for putting all Proceedings, Pleadings, *&c.* into the *Engliſh* Tongue, Abbreviations in an Attorney's Bill, ſuch as *fo.* for *folio*, *Mr.* for *Maſter*, *pd.* for *paid*, *&c.* are helped after a Verdict. *Comyns* and *Wright* for Plaintiff; *Chapple* for Defendant.

Goodright *againſt* Tregurtha and another. Trin. 8 & 9 Geo. 2.

In Ejectment. UPON the Trial, one of the Defendants confeſſed Leaſe, Entry and Ouſter, and a Verdict was found againſt him for one Third of the Tenements in Queſtion: The other Defendant did not confeſs; and againſt him *Belfield* moved for Coſts, which in this Caſe Plaintiff could not have upon the common Rule by Conſent. The Court made a Rule to ſhew Cauſe, which was afterwards made abſolute, no Cauſe being ſhewn.

Hayes *againſt* Thornton. Eaſter 9 Geo. 2.

A Rule being obtainded by Defendant for Coſts againſt Plaintiff, and the ſame not being paid before Defendant's Death, were demanded of Plaintiff by Virtue of a Letter of Attorney from *Thornton*, Defendant's Adminiſtratrix, which Matter appearing by Affidavit, and that the Letters of Adminiſtration and Power of Attorney were ſhewn to Plaintiff at the Time of the Demand, Court made a Rule for an Attachment againſt Plaintiff for Non-payment of theſe Coſts, upon *Belfield*'s Motion.

Aſhton, an Attorney, *againſt* Molineux. Trin. 10 Geo. 2.

A Rule was obtained for Plaintiff to ſhew Cauſe why his Bill of Coſts for Buſineſs done in *Doncaſter-Court*, *Yorkſhire*, (for Recovery whereof this Action was brought) ſhould not be referred to Prothonotary to be taxed: Upon ſhewing Cauſe it appeared that all the Buſineſs was done in *Doncaſter-Court*, and the Bill had been taxed by the proper Officer there. The late Act of Parliament directs Bills to be taxed in that Court where the major Part of the Buſineſs charged is done; and therefore the Rule was diſcharged. *Agar* for Plaintiff; *Wynne* for Defendant.

Chapple and another, Executors of Gough an Attorney, *againſt* Chapman.

THE Plaintiffs had delivered a Bill of Law Buſineſs, done by their Teſtator. Defendant moved to tax it upon bringing the Money into Court; *ſed negatur*; 'tis conſtantly denied here. *Prime* for Defendant; *Eyre* for Plaintiffs.

Jeffs *againſt* Slater. (Vide Rule Trin. 13 Geo. 2.)

AGAR moved for Coſts for not proceeding to execute a Writ of Inquiry according to Notice; the Notice not being countermanded. Denied.

Harper, an Attorney, *againſt* Leech.

AGAR moved to ſtay Proceedings in this Action, which was brought for Recovery of a Bill of Coſts before the Expiration of a Month after the Delivery thereof. *Hawkins* for Plaintiff urged, that this Matter may be pleaded, or taken Advantage of at the Trial, and therefore Proceedings ought not to be ſtayed on Motion. No Rule.

Bracher *againſt* Cotton. Hil. 10 Geo. 2.

AT *Niſi prius* a Juror was withdrawn by Conſent, and Matters in Difference referred to Arbitrators, who awarded Coſts to be taxed: And the Queſtion was, Whether or no Prothonotary ought to allow Coſts of the Reference. Held *per Cur'*, That theſe Coſts ought not to be allowed. *Chapple* for Defendant; *Eyre* for Plaintiff.

Eyles, Bart. *againſt* Smart.

PLaintiff had moved for a Special Jury, according to the late Act of Parliament; and having obtained a Verdict, the Queſtion was, with what Coſts Defendant ought to be charged on that Account. Held *per Cur'*, That the Charge of ſtriking the Special Jury muſt not be allowed; but all other Expences relating to the Special Jury, ſo far as reaſonable, muſt be allowed. *Comyns* and *Wright* for Plaintiff; *Wynne* for Defendant.

Jeynes qui tam, *againſt* Stephenſon. Eaſter 10 Geo. 2.

THIS was an Action on Penal Statute 5 *Eliz.* againſt Defendant, for exerciſing the Trade of a *Glover*, not having ſerved an Apprenticeſhip; and on the Trial the Jury found a Verdict for the Defendant. Coſts were taxed on the *Poſtea*, and levied on Plaintiff by *Ca. Sa.* *Eyre* moved for Plaintiff to ſet aſide the *Ca. Sa.* and for Reſtitution, urging, That as in this Action, if Plaintiff had recovered he would not have been intitled to Coſts; ſo, though the Verdict be againſt him, he is not liable to pay Coſts; and a Rule was made to ſhew Cauſe, which was diſcharged. Plaintiff is a common Informer, and not the Party grieved, and is liable to Coſts *infra* Statute 18 *Eliz. cap.* 5. *ſect.* 3. 1 *Ander.* 116. *Sav.* 50, 51. 1 *Salk.* 30. *Kirkham* againſt *Wheeler*. *Parker* and *Draper* for Defendant.

Ibbotſon *againſt* Browne. Eaſter 11 Geo. 2.

THIS was an Action of Treſpaſs, *Quare Clauſum fregit.* Defendant pleaded a Juſtification. Plaintiff made a new Aſſignment, whereto Defendant pleaded Not guilty; and Plaintiff having recovered a Verdict with Damages under 40*s.* and the Judge who tried the Cauſe not having certified as required *per Stat.* 22 & 23 *Car.* 2. the Queſtion was, Whether Plaintiff ought to have full Coſts or not? *Per Cur':* Here is no Special Pleading; the new Aſſignment is only to aſcertain the Place; Plaintiff can have no more Coſts than Damages. *Bootle* for Plaintiff; *Prime* for Defendant.

Clarke, an Attorney, *againſt* Taylor.

DEfendant moved, that Plaintiff's Bill of Coſts whereon this Action was brought might be taxed after Judgment by Default, and a Writ of Inquiry executed; but *per Cur'*, The Damages are now aſcertained, Defendant applies too late, might have come any Time before. *Glyde* for Defendant; *Chapple* for Plaintiff.

Noble *againſt* Lancaſter.

THIS was an Action of Trover, whereto Defendant pleaded *Non aſſumpſit*; and Iſſue being joined, the Cauſe was tried, and a Verdict found for the Plaintiff; but the Iſſue being immaterial, the Judgment was arreſted, and a Repleader awarded; a Rule to replead was afterwards given by the Plaintiff, and for want of Defendant's repleading Judgment was ſigned by Default, and a Writ of Inquiry executed. The Queſtion was, Whether the Prothonotary, in taxing Coſts on ſigning the final Judgment, ſhould allow Plaintiff the Coſts of the immaterial Pleading and Trial, *&c. Et per Cur'*, No Coſts were given at the Time of the Repleader granted, and there can be none now; both Parties have been in Fault, the immaterial Pleading is void, and neither Party can have Coſts for it. 2 *Ventr.* 196. *Walker* againſt *Brooke*, *Trin.* 8 *Gul.* 3. *Belfield* for Defendant; *Eyre* for Plaintiff.

Wickham *againſt* Walker. Mich. 11 Geo.

DEfendant, an inferior Tradeſman, hunts in Company with a Perſon qualified, who kills a Hare, and Defendant being ſued on Statute—*Ann.* Plaintiff obtained a Verdict, and a Point reſerved, Whether Defendant was liable to Coſts, was argued. The Court was of Opinion, that Defendant being found by the Jury to be an inferior Tradeſman (a *Clothier* and Alehouſe-keeper) is within the Statute which was made to prevent ſuch People from miſpending their Time: Defendant's Trade is as much neglected when he hunts with a qualified Perſon, as without. *Per Holt*: Every Tradeſman not qualified, is an inferior Tradeſman, and tho' qualified, he cannot hunt in any Perſon's Ground but his own. Defendant muſt pay Coſts. *Eyre* for Plaintiff; *Agar* for Defendant.

Lazarus *againſt* Pritchard, Hil. 11 Geo. 2.

In Trover. A Rule to ſhew Cauſe why Proceedings ſhould not be ſtayed till after Payment of Coſts allowed Defendant in a former Action for the ſame Thing, was diſcharged as unprecedented: The Court will not make ſuch Rule in any Caſe, except Ejectment. *Skinner* for Plaintiff.

Boſeville, Attorney, *againſt* ——. Trin. 11 & 12 Geo. 2.

PLaintiff's Bill of Coſts was referred to Sir *George Cooke* upon Defendant's undertaking to pay; and after the Taxation Plaintiff proceeded to Judgment, which was ſet aſide by the Court for want of Plaintiff's filing an Affidavit made uſe of before Sir *George*, to augment his Allowance of Coſts, according to the late Rule of Court. *Hil.* 11 *Geo.* 2. —— for Defendant; —— for Plaintiff.

Shindler *againſt* Roberts. Eaſter 12 Geo. 2.

ON Penal Statute for acting as Commiſſioner of the Land-Tax, not being qualified: After Trial, and Caſe reserved, *Skinner* moved that Plaintiff's Attorney might deliver to Defendant an Account in Writing of Plaintiff's Place of Abode, *&c.* The Court thought the Motion came very late; but upon Defendant's Affidavit that he did not know what was the Cauſe of Action 'till *February* laſt, when he was ſerved in the Country with Notice of the Declaration ſo late, that he could not apply laſt Term, a Rule was granted to ſhew Cauſe, and on hearing *Prime* for Plaintiff, who objected that this Motion ought to be before Plea, and that a Special Jury had been moved for by Defendant, Rule was made abſolute. *Skinner* afterwards moved that Plaintiff might give Security for Coſts in Caſe Judgment ſhould go againſt him; but was denied: Plaintiff is a viſible Perſon, and has a Right by Law to bring the Action.

Cowper *againſt* Milburn. Trin. 13 Geo. 2.

BIRCH for Defendant moved, That Mr. *Canning*, Defendant's late Attorney, might deliver a Bill of Coſts, and that the ſame might be referred to the Prothonotary to be taxed. *Per Cur':* Theſe are diſtinct Motions: Let *Canning* ſhew Cauſe why he ſhould not deliver Defendant a Bill; and that being done Defendant

dant may apply for a Taxation, which he cannot regularly do before a Bill delivered.

Horsfall *againſt* Greenwood and three others.

IN *Hilary* Vacation laſt Defendants pleaded four Special Pleas; and afterwards, the ſame Vacation, before Replications delivered, withdrew their Special Pleas, and pleaded the General Iſſue, inſiſting that by the Courſe of the Court they had a Right ſo to do, without Payment of Coſts. *Bootle*, for Plaintiff, moved for Coſts: *Draper* for Defendant, oppoſed the Motion. *Per Cur'*: No Rule can be made upon this Motion; the Practice is ſettled. Defendant may, by the Courſe of the Court, withdraw a Special Plea and plead the General Iſſue the ſame Term, before Replication delivered, without Coſts. In this Caſe Plaintiff had adviſed with Counſel upon the Pleas, and Replications were prepared, but not delivered. *Robinſon* againſt *Simonds*, *Mich.* 5 *Geo.* 2. *Martindale* againſt *Galloway*, *Hill.* 7 *Geo.* 2.

Creeke and another, Adminiſtrators, *againſt* Pitcairne, Clerk.

In Prohibition. PLaintiffs were nonſuited at the Aſſizes upon an Iſſue of *Modus*, or no *Modus*: Defendant moved for Coſts, and had a Rule to ſhew Cauſe, which Rule was diſcharged; the Demand for Tithes having accrued in the Life-time of the Inteſtate, and being a Demand for which Plaintiffs could not ſue in their own Right. *Prime* for Defendant; *Bootle* for Plaintiff.

Horsfall *againſt* Greenwood and others. Mich. 13 Geo. 2.

DEfendants having withdrawn Special Pleas, and pleaded General Iſſue the ſame Term, without Coſts; *per curſ' Cur'*, Plaintiff, after having obtained a Verdict, applied to the Court to have the Coſts of the Special Pleas allowed upon the Taxation of Coſts on the *Poſtea*; inſiſting, that though he could not have theſe Coſts upon the Amendment, yet they ought to attend the Event of the Cauſe. The Court refuſed to order the Allowance of theſe Coſts, no Precedent being ſhewn where ſuch Coſts had ever been allowed. *Bootle* for Plaintiff; *Agar* for Defendant.

Slaughter, by Mundy, his next Friend, *againſt* Talbot.

COSTS being allowed, and taxed to Defendant, were demanded of *Mundy*, Plaintiff's next Friend, who refuſed to pay; and Defendant moved for an Attachment againſt *Mundy* for Non-payment. Shew Cauſe. *Per Cur'*, the Rule abſolute: By the uniform Practice of all the Courts the *Prochein Amie* is liable to Coſts. *Ingefield* againſt *Round*, *Hill.* 1726. *Skinner* for Defendant; *Eyre* for *Mundy*.

Dovor *againſt* Robinſon. Eaſter 13 Geo. 2.

THIS was an Action for ſcandalous Words. Defendant juſtified, and Plaintiff recovered a Verdict for Damages under 40*s*. Plaintiff procured full Coſts to be taxed, and Defendant being taken in Execution, moved to be diſcharged, *&c.* The Court declared, that by the Statute Plaintiff can have no more Coſts than Damages. Not guilty pleaded, or a Juſtification, makes no Difference (ſpecial Damage not being proved); and ordered the *Ca. Sa.* to be ſet aſide, and Reſtitution and Coſts, and by Conſent no Action to be brought. *Agar* for Defendant; *Prime* for Plaintiff.

Ecollier *againſt* Dutour. Trin. 13 & 14 Geo. 2.

Johnſon, Defendant's late Attorney, delivered Defendant a Bill of Coſts amounting to 5*l*. 4*s*. 2*d*. and accepted 4*l*. 14*s*. 6*d*. in full Satisfaction; the Bill was afterwards taxed, and upon Taxation, 19*s*. were taken off, and 4*l*. 5*s*. 2*d*. allowed. Defendant obtained a Rule for *Johnſon* to ſhew Cauſe why he ſhould not pay the Coſts of Taxation, inſiſting, that more than a ſixth Part of his Bill had been diſallowed. But the Court conſidered the Sum accepted by *Johnſon* in full of his Bill, as his Demand, and the Sum of 9*s*. 4*d*. which appeared to be the Deduction therefrom

from not amounting to a ſixth Part, the Rule was diſcharged, upon Repayment of 9*s.* 4*d.* overpaid. *Draper* for *Johnſon*; *Urlin* for Defendant.

Downes, Adminiſtrator, *againſt* Shaft.

In Trover. THE Converſion was laid to be in the Life-time of Plaintiff's Inteſtate; Defendant had a Verdict, and moved for Coſts, which were denied. *Bootle* for Defendant; *Wynne* for Plaintiff.

Ibbotſon *againſt* Browne. Eaſter 11 Geo. 2.

THIS was an Action of Treſpaſs *Quare Clauſum fregit*; Defendant pleaded a Juſtification, Plaintiff made a new Aſſignment, whereto Defendant pleaded Not guilty; and Plaintiff having recovered a Verdict with Damages under 40*s.* and the Judge who tried the Cauſe not having certified as required *per* Statute 22 & 23 *Car.* 2. the Queſtion was, Whether Plaintiff ought to have full Coſts, or Not? *Per Cur'*: Here is no Special Pleading; the new Aſſignment is only to aſcertain the Place. Plaintiff can have no more Coſts than Damages. *Bootle* for Plaintiff; *Prime* for Defendant.

Creake, Adminiſtratrix, and Creake, Adminiſtrator of Creake, *againſt* Pircairne, Clerk, in Prohibition. Trin. 13 & 14 Geo. 2.

A Writ of Prohibition having been granted in *Michaelmas* Term 1738, on the Plaintiffs Motion, and Plaintiffs not having proved their Suggeſtion to be true within ſix Months, purſuant to the Statute of 2 & 3 *Edw.* 6. Defendant moved in *Hilary* Term 1739. that a Writ of Conſultation might be awarded for Defendant, Plaintiffs not proving their Suggeſtion to be true within the Time limited by the Statute; and that Plaintiffs might, according to the Direction of ſuch Statute, pay to Defendant double Coſts; and a Rule was granted to ſhew Cauſe. After ſeveral Motions, it was now doubted, whether the Plaintiffs, being Adminiſtrators, ought to pay Coſts: But the Court ſeemed to think that Defendant was intitled of Courſe to a Writ of Conſultation. *Sed Cur' adviſare* as to both Points.

Palmer *againſt* Williams, Clerk. Mich. 15 Geo. 2.

DEfendant, after ſeven Years Litigation, obtained a Sentence in the Spiritual Court againſt Plaintiff for Petty Tithes of Gooſeberries and Strawberries, of the Value of *7d.* three farthings *per Ann.* Plaintiff applied for a Prohibition; and for the Information of the Court, a feigned Iſſue was directed, to try whether the Plot of Ground where theſe Gooſeberries, *&c.* grew, was Parcel of an ancient Orchard, or not. The Fact being found in Plaintiff's Favour, a Prohibition was granted; and a Queſtion aroſe, Whether Plaintiff ſhould have any, and what Coſts? *Per Cur':* Plaintiff muſt have his Coſts of the feigned Iſſue. As to Coſts of the Spiritual Court, (where Plaintiff has been unjuſtly vexed) they are not in our Power to give. Since the Statute giving Coſts of Suit in Prohibition after Judgment, Coſts commence from the Suggeſtion, which is taken to be the Commencment of the Suit, in lieu of an Original Writ of Prohibition. *Draper* for Plaintiff; *Prime* and *Wynne* for Defendant.

Howard, Executor, *againſt* Radburn. Hil. 15 Geo. 2.

RULE was made abſolute for Judgment of Nonſuit, purſuant to late Act of Parliament. But *per Cur':* Plaintiff being an Executor, is not ſubject to Coſts; if a Nonſuit had happened at the Aſſizes, Plaintiff would not have been liable to Coſts.

Goodtitle, on the Demiſe of Clewlow and his Wife, *againſt* Lowe and Lowe, in Ejectment; Lowe *againſt* Lowe and another, in Caſe. Trin. 16 Geo. 2.

RULE obtained on the Motion of *Clewlow*, upon Affidavit of *Lowe*'s Inſolvency, to ſhew Cauſe why the Coſts recovered by *Clewlow*, in one of theſe Actions, ſhould not be ſet off againſt the Coſts recovered by *Lowe* in the other Action. *Waſe*, Attorney for *Lowe*, ſhewed for Cauſe, that the Parties in the two Cauſes were different; and that by this Means *Clewlow*, who was in good Circumſtances, would be diſcharged, and *Waſe* would have no Remedy for his Coſts, *Lowe* being inſolvent. The Rule was diſcharged. *Skinner* for *Waſe*; *Birch* for *Clewlow*. The Court denied to ſet Coſts againſt Coſts. *Ford* againſt *Miles*, *et e contra*, *Eaſter* Term 1739.

Honiwell *againſt* Blatchford. (Title *Nonpros*, *&c.*)

DEfendant moved for Judgment, as in Caſe of Nonſuit, purſuant to the Statute, for want of Plaintiff's trying the Iſſue according to the Courſe of the Court, after a Treaſury Rule obtained by Defendant againſt Plaintiff for Coſts, for not proceeding to Trial according to Notice, and Coſts taxed thereon. *Per Cur'*: Defendant ſhall not take both Remedies, but one only, at his Election; he hath made Choice of the one, and cannot now have the other. No Rule. *Belfield* for Defendant; *Gapper* for Plaintiff.

Thruſtout, on the Demiſe of Jenkinſon, *againſt* Woodyear, Eſq; and his Wife, Hoole, Alliſon and Hardwick, in Ejectment. Hil. 16 Geo. 2.

UPON the Trial, Plaintiff obtained a Verdict againſt all the Defendants except *Hoole*, who was found Not guilty; Plaintiff's Coſts were taxed upon the *Poſtea*, and alſo Defendant *Hoole*'s (at three Pounds.) *Hoole* applied to the Court, and obtained a Rule to ſhew Cauſe why he ſhould not be allowed a third Part of Defendant's common Coſts, and all his extraordinary Coſts: But upon ſhewing Cauſe, it appearing that the Allowance of Coſts was juſt, and that the Motion was a mere Contrivance to charge Plaintiff's Leſſor with extraordinary Coſts, which were accrewed on Account of all the Defendants, and not on the particular Account of *Hoole* only, though the main Queſtion was determined in Plaintiff's Favour, and though *Hoole* was Tenant to Defendant *Woodyear*, and indempnified by him. The Rule was diſcharged with Coſts. for *Hoole*, for Plaintiff.

Turner *againſt* Horton. Eaſter 16 Geo. 2.

THIS was an Action for ſeveral Sets of ſlanderous Words ſpoken by Defendant of Plaintiff in his Trade of a Baker, *(viz.) Turner* will break before *Chriſtmas*; and I will lay a Wager of it; and ſuch like; and laid Special Damage, *viz.* that *Charles Hedges* refuſed to deal with him upon Credit. Plaintiff obtained a Verdict, Damages Two-pence. And the Queſtion was, Whether Plaintiff ſhould have more Coſts than Damages, under the Statute 21 *Jac. cap.* 15. *ſect.* 6? *Per Cur'*: Plaintiff can have no more Coſts than Damages; the true Diſtinction is, that where the Words are actionable in themſelves, without the Special Damage, that is a Caſe within the Act of Parliament, and Plaintiff can have no more Coſts than Damages. But where the Words are not actionable in themſelves, but the Action is maintainable only with Reſpect to the Special Damage, then 'tis a Caſe at large, and out of the Statute; and Plaintiff, if he recovers any Damage, will be entitled to full Coſts. Where the Words are actionable, (as in this Caſe) the Special Damages are to be conſidered merely by way of Aggravation, and no Notice ought to be taken of them in the Verdict, which muſt be generally, Guilty or Not guilty. The Verdict was for Plaintiff on the firſt and fourth Sets of Words only, but that makes no Alteration, the Words, in this Caſe, being all equally actionable, as ſpoken of Plaintiff in the Way of his Trade. Where the Words are not actionable, there the Special Damages are the Jett of the Action; and if the Jury find Defendant Guilty of ſpeaking the Words, and acquit him as to the Special Damages, the Verdict ought to be ſo taken.

Grey, Adminiſtrator, *againſt* Lockwood, in Trover. Trin. 16 & 17 Geo. 2.

THE Converſion being in the Time of the Adminiſtrator, the Action might have been maintained by Plaintiff in his own Right; and after Judgment for Defendant, the Court held that Plaintiff muſt pay Coſts.

Broadbent *againſt* Wilks, in Treſpaſs.

THough the Treſpaſs was confeſſed by the Plea, Plaintiff replied, and Iſſue being joined, on the Trial a Verdict was found for Defendant. Afterwards the Court gave Judgment for Plaintiff, notwithſtanding the Verdict, and a Writ of Enquiry of Damages having been executed, the Queſtion was, What Coſts ſhould be allowed Plaintiff on ſigning final Judgment? The Court directed the Prothonatory to allow Plaintiff all the Coſts in the Cauſe, except the Coſts of the Trial. *Prime* for Plaintiff; *Bootle* for Defendant.

Ogle, Executor, *againſt* Moffatt. Mich. 17 Geo. 2.

RULE for Plaintiff to pay Coſts for not proceeding to Trial at laſt *Northumberland* Aſſizes, according to Notice, diſcharged. It appearing that the Cauſe was entered with the Marſhal, that one material Witneſs was ſerved with a *Subpœna*, and could not attend, and another was diſabled by a Fall from his Horſe. Plaintiff hath made no wilful Default; if he had, he muſt have paid Coſts, though he ſues as Executor. *Prime* for Plaintiff; *Bootle* for Defendant.

Holdfaſt, on the Demiſe of Hatterſley, an Infant, *againſt* Jackſon. Trinity 17 & 18 Geo. 2.

AFTER a former Ejectment brought *in Banco Regis*, a Caſe made, Argument thereon, and a Determination in favour of Defendant, and Defendant's Coſts taxed, a new Ejectment was brought in this Court: Defendant obtained a Rule to ſhew Cauſe why Proceedings ſhould not be ſtayed till after Payment of Coſts in the former Ejectment, which was made abſolute. The Courts of *Weſtminſter-Hall* pay the ſame Regard one for another, and conſider a former Ejectment in another Court as they do a former Ejectment in the ſame Court. *Salk.* 255. *Anonymous. Doe ex dim' Ducheſs of Hamilton* againſt *Hatherley* 14 *Geo.* 2. *in B. R.* The ſame Practice *in Scaccario*. *Bootle* for Defendant; *Skinner* for Plaintiff.

Milbourn *againſt* Reade. Trin. 17 & 18 Geo. 2.

DEclaration in Treſpaſs, for aſſaulting, beating and wounding Plaintiff, at the Pariſh of *(A.)* and alſo for obſtructing him in getting Coals, and for taking and carrying away Coals of Plaintiff, and ſpoiling other his Coals there, and for breaking and pulling down a Standard and Roller of Plaintiff's, and taking and carrying away other Goods and Chattels of Plaintiff's there. Plea Not guilty. On Trial Defendant found Guilty of all the Premiſſes, except taking and carrying away the Goods and Chattels; Damages 5 *s.* Coſts 5 *s.* and as to taking and carrying away ſaid Goods and Chattels, Not guilty. No Certificate by the Judge that the Aſſault and Battery was ſufficiently proved, or that the Freehold or Title of Land came chiefly in Queſtion, *ſecundum Stat'* 22 & 23 *Car.* 2. *cap.* 9. *ſect.* 136. and for Want thereof, after Prothonotary had taxed Plaintiff full Coſts, Defendant obtained a Rule to ſhew Cauſe why ſaid Taxation ſhould not be ſet aſide; which Rule, after hearing Counſel on both Sides, was diſcharged by the Court.

Held, agreeably to the uniform Determinations of the Courts at *Weſtminſter,* almoſt ever ſince ſaid *Stat'* 22 & 23 *Car.* 2. That no Action is comprehended within that Statute but of Treſpaſs *Quare clauſum fregits* and of Aſſault and Battery; in all other perſonal Actions, a Plaintiff who recovers Damages, though under 40 *s.* (except Actions for ſcandalous Words, which are governed by a particular Law) is intitled to full Coſts by the Statute of *Glouceſter,* without the Aid of a Certificate under ſaid *Stat' Car.* 2. unleſs deprived of that Benefit by a Certificate according to the Statute 43 *Eliz. cap.* 6. *ſect.* 2. Lord Chief Juſtice *Willes* paid no Regard to the Spoliation or Aſportation of Chattels; he quoted *Venn* againſt *Phillips, Salk.* 208, *Thompſon* againſt *Berry, C. B. Paſch.* 7. *Geo.* 2. Mr. Juſtice *Abney* was of the ſame Opinion. Mr. Juſtice *Burnett* differed in that Reſpect; he apprehended one Part of this Verdict (the Aſſault and Battery) to be within, and the other Part (the Treſpaſs as to the Spoliation of perſonal Chattels) to be out of ſaid *Stat. Car.* 2. but as Plaintiff might have brought ſeparate Actions, and poſſibly have recovered full Coſts in each for the Aſſault and Battery, with a Certificate, and for the Spoliation of Chattels, without a Certificate, he is, by joining both together, leſs vexatious to Defendant. Plaintiff is intitled to Coſts in this Action, as he would have been in a ſeparate Action for the Spoliation or Aſportation of Chattels only. In this Caſe, as the Treſpaſs is laid generally at the Pariſh of *(A.)* and not in any particular Cloſe of Plaintiff, the Title of Land could not come in Queſtion. *Lately* againſt *Fry*, *Comyns Rep.* 19, 20. Action for breaking Plaintiff's Cloſe, and cutting and carrying away his Corn there, Defendant found Guilty of breaking the Cloſe, and cutting the Corn, but as to the carrying away Not guilty; Damages under 40*s.* no Certificate. The Court refuſed to give full Coſts for Want of a Certificate, becauſe the Treſpaſs found was within the Statute; but after ſeveral Debates, the Court inclined to be of Opinion to have given full Coſts, if beſides breaking the Cloſe and cutting the Corn, Defendant had alſo been found Guilty of carrying away the Corn, which would have made that Caſe parallel to the preſent; for then the Jury would have found one Treſpaſs within the Statute, and another Treſpaſs out of the Statute. *Wynne* for Defendant; *Draper* and *Bootle* for Plaintiff.

Mitchell, Widow, *againſt* Younghuſband. Mich. 18 Geo. 2.

ACTION for Words (Special Damage laid, by which Plaintiff loſt her Marriage.) General Verdict for Plaintiff, Damages Two-pence. Rule abſolute, that Plaintiff ſhould have full Coſts, the Words themſelves not being actionable, but only as they are coupled with the Special Damage. *Bootle* for Plaintiff; *Prime* for Defendant.

Waite *againſt* Smales, *ex parte Exec' Def'.* Hil. 18 Geo. 2.

WRIT of Enquiry by Conſent, directed to be executed before a Judge at the Aſſizes, not entered with the Marſhal. After the other Buſineſs done, there was Time to execute this Writ; Plaintiff had given Notice of executing it on a particular Day, during the Aſſizes at *York*; Defendant's Executors applied for Coſts, which were denied. Plaintiff is not in fault. This Caſe is not with the Rule concerning Records of *Niſi prius*. The Judge herein is no more than an Aſſiſtant to the Sheriff, to whom the Writ is directed. The Notice ought to have been general; Notice for a particular Day is void. *Skinner* and *Bootle* for the Executors.

Harper *againſt* Sherrard. Hilary 20 Geo. 2.

DEfendant having pleaded his Diſcharge under the inſolvent Debtors Act, and having obtained Judgment, was intitled to treble Coſts under the Statute; the Queſtion was, From what Time ſuch Coſts ought to be computed? A Rule by Conſent was entered into, that the Defendant ſhould have treble Coſts from the Time of his Plea. *Draper* for Defendant; *Bootle* for Plaintiff.

Greenhow *againſt* Ilſley and others. Eaſter 21 Geo. 2.

THE Plaintiff declared, that he was poſſeſſed of and in an ancient Meſſuage and divers Acres of Land *cum pertin'*, in *Sandhurſt Com' Berks*, and by Reaſon thereof he had, and of Right ought to have, Common of Paſture for all his commonable Cattle *levant* and *couchant* upon his ſaid Meſſuage and Lands, in a certain Common or Waſte called *Sandhurſt Common*, every Year at all Times of the Year, except upon and from the 10th of *June* until and upon the 10th of *July*, but Defendants, to hinder and deprive him of his ſaid Common of Paſture, cut and dug Turf, *(viz.)* 100 Cart Loads of Turves in twenty Acres of the Soil of that Common, and took and carried away the Turves there cut and dug, whereby the Plaintiff could not have and enjoy his Common of Paſture in ſo large, ample and beneficial Manner as he ought to have done, but loſt the greateſt Part thereof. He alſo declared in like Manner with Reſpect to Common of Turbary.

Defendants Pleas. The Defendants, by Leave of the Court, plead three Pleas, *viz.* firſt, Not guilty; ſecondly, as to the firſt Count, that *Adam Williamſon*, Eſq; is ſeiſed of the Manor of *Sandhurſt*, in his Demeſne as of Fee, and that Defendants, as his Servants, and by his Command, cut and dug the Turves in the firſt Count mentioned, then growing and being in the *Locus in quo*, as being in the ſeveral Soil and Freehold of the ſaid *Adam Williamſon*, and took and carried away the ſame for the Uſe of the ſaid *Adam Williamſon*; thirdly, the like Plea as to the ſecond Count.

New Aſſignment. As to the ſecond Plea, the Plaintiff, by a new Aſſigment, ſays, that he ought not to be barred from having his Action, becauſe that the 100 Cart Loads of Turves mentioned in the firſt Count, were 100 Cart Loads of Turves cut and dug for Sale, and ſold, taken and carried away, and were other 100 Cart Loads of Turves than the 100 Cart Loads mentioned in the Plea to be cut, dug, taken and carried away for the Uſe of the ſaid *Adam Williamſon*; and concludes with an Averment; and inaſmuch as the Defendants have not anſwered the cutting, digging and carrying away the Turves newly aſſigned, the Plaintiff prays Judgment, and his Damages; and replies in like Manner to the third Plea.

Plea to the new Aſſignment. As to the Treſpaſſes, *&c.* as to the Turves firſt and ſecondly anew aſſigned to be cut and dug for Sale, and ſold, taken and carried away, the Defendants ſay, that the ſaid *Adam Williamſon* long before the Time when, *&c.* was, and ſtill is, ſeiſed in his Demeſne as of Fee of and in the Manor of *Sandburſt*, and being ſo ſeiſed before the Time when *&c.* *viz.* on the 27th *October* 1735, he gave and granted to one *Thomas Solmes*, in his Life-time, Licence and Liberty to cut and dig Turf and Peat for Sale, from and off the ſaid Place called *Sandburſt Common*, in which, *&c.* and to take and carry away the ſame, and to ſell and diſpoſe thereof, for his own Uſe and Benefit, at his own Will and Pleaſure, to hold the ſaid Licence and Liberty from *Michaelmas* then laſt paſt for 99 Years, in Caſe the ſaid *Thomas Solmes* ſhould ſo long live; by Virtue of which Licence and Liberty the Defendants, after the granting of the ſaid Licence, and during the Life of the ſaid *Thomas*, *viz.* on the 1ſt *May* 1743, and at divers other Days and Times between that Day and the 24th of *November* in the ſame Year, on which Day the ſaid *Thomas* died, (except within and during the Times above excepted) as Servants of the ſaid *Thomas Solmes*, and by his Command, entered into the ſaid Places, in which, *&c.* in order to cut and dig Turves there, for the Purpoſe aforeſaid, and then and there cut and dug the ſaid Turves firſt anew aſſigned, and alſo the Turves ſecondly anew aſſigned, and took and carried away, and delivered the ſame to and for the Uſe and Benefit of the ſaid *Thomas Solmes*, as it was lawful for them to do; which ſaid Turves were afterwards ſold by the ſaid *Thomas Solmes*, by Virtue of his Grant and Licence aforeſaid; which are the ſame Treſpaſſes, *&c.* above anew aſſigned; and concludes with an Averment.

Demurrer. To this the Plaintiff demurs.

Joinder in Demurrer. And the Defendants join in Demurrer.

On the Demurrer the Plaintiff had Judgment, but on the Trial of the Iſſue joined upon the Not guilty, the Plaintiff was nonſuited.

Prothonotary *Cooke* having a Doubt as to the Taxation of Coſts for the Plaintiff on the Demurrer, in *Eaſter* Term 21 *Geo.* 2. Plaintiff moved the Court, and obtained a Rule for the Defendants to ſhew Cauſe why Coſts of the two Pleas pleaded by the Defendants, which on a Demurrer joined were judged inſufficient, ſhould not be given for the Plaintiff; and the Taxation of the Defendants Coſts of the Nonſuit was ordered to be ſtayed till the Court ſhould otherwiſe order.

After hearing Counſel on both Sides, and after a Conſultation with all the Judges, (amongſt whom was ſome Diviſion in Opinion) the Court in *Hilary* Term 22 *Geo.* 2. ordered, that it be referred to the Prothonotary to tax the Plaintiff's Coſts of the Demurrer joined between the Parties, according to the Act of Parliament made in the fourth Year of the Reign of her late Majeſty Queen *Anne*, intituled, *An Act for the Amendment of the Law, and the better Advancement of Juſtice*; and that ſo much as ſhall be thereon allowed, be deducted out of the Sum that ſhall be allowed the Defendants for their Coſts in this Action. *Prime* and *Belſield* for Plaintiff; *Skinner* for the Defendants.

Fyſon *againſt* Cooke and others, in Replevin. Mich. 22 Geo. 2.

DEfendants having obtained an Order to amend their Avowry on Payment of Coſts; *Noyes*, Defendants Agent, after Plaintiff's Death, which he knew not of, paid 5*l.* 11*s.* 6*d.* Coſts, taxed on the Amendment, to *Lloyd*, Plaintiff's Agent. The Judges in the Treaſury ordered the Money to be repaid.

Malton, who as well, &c. *againſt* Acklam and others, in Prohibition.

AFTER a Verdict for Defendant as to Part, the Queſtion was, Whether he ſhould be allowed Coſts, purſuant to Stat.

Will. 3. or not? *In Quare Impedit*, if Defendant has Judgment, a Writ is awarded to the Biſhop; in Replevin, a Writ of *Retorn' Habend'*, and Coſts are given to the Avowant in ſome Caſes by *Stat.* 21 *Hen.* 8. in Prohibition by 4 *Jac.* 1. a Conſultation is given, and ſince the Statute *W.* 3. Coſts, *&c.* if Verdict, *&c.* paſs againſt Plaintiff. Rule that Judgment be entered for a Conſultation as to Part, and for Coſts. The *Poſtea* was agreed to be altered, with Reſpect to finding that Plaintiff proceeded in the Spiritual Court after the Writ of Prohibition delivered to him, which is material. *Bootle* for Defendant; *Agar* for Plaintiff.

Poole *againſt* Boulton and others, in Trover. Hil. 22 Geo. 2.

ON the Trial, Plaintiff obtained a Verdict againſt one of the Defendants, but the two others were acquitted. *Prime* moved on Behalf of the two Defendants found Not guilty, for Coſts. Denied. This is an Action of Treſpaſs on the Caſe, and not within the Statute 8 & 9 *W.* 3. giving Coſts to Defendants acquitted in Treſpaſs, *&c.*

Lomax, Eſquire, *againſt* The Biſhop of London, Creſpin, Clerk, and Cooke, Eſquire, in Quare Impedit. Same Term.

THE Biſhop's Plea was, No Claim but as Ordinary; Judgment paſſed againſt Defendant *Cooke* for Non-appearance on a *Diſtringas.* An Iſſue between Plaintiff and Defendant *Creſpin*, on the Right of Preſentation, was tried, and a Verdict found for Plaintiff. Afterwards a Writ of Enquiry was awarded as to Matters (omitted at the Trial) *viz.* firſt, Whether the Vicarage was full? ſecondly, If full, at whoſe Preſentation; and how much Time is elapſed ſince it laſt began to be vacant? and thirdly, The true Value of the Vicarage by the Year? By the Inquiſition it was returned, That the Vicarage was full of the Defendant *Daniel Creſpin*, on the Preſentation of the King; that it began to be vacant 26th *June* 1746, on the Death of *John Romney*, Clerk; Value by the Year 120 *l.* *Draper* for Plaintiff moved for Coſts, Damages being given by the Statute of *Weſtminſter* 2. and by the Statute of *Glouceſter*, Coſts in all Caſes where Damages. He quoted *Holl* againſt *Holland*, 3 *Lev.* 35. and *Skinner* 25. Rule was made to ſhew Cauſe, which was afterwards diſcharged. The Statute of *Glouceſter*, 6 *Ed.* 1. relates to Caſes at Common Law and Statutes antecedent. The ſubſequent Statute of *Weſtminſter* 2. 13 *Ed.* 1. creates Damages in *Quare Impedit*, where there were none before at Common Law, (doth not add to Damages that were recoverable before) gives two Years Value, where the Turn is loſt by Laches, if not, and Living full, Half a Year's Value. *Mich.* 10 *James* 1. *Pinfold*'s Caſe, 10 *Coke*, where Damages are created, (none before) no Coſts; where the Damages are additional, Coſts. 1 *Jones*, Sir *Thomas*, 234. *Kelway* 26. *a*. *Skinner* is miſtaken, he refers to two Caſes in *Coke* which don't warrant him. In *Quare Impedit* the King has no Damages, becauſe he is not within the Statute of *Weſtminſter*. *Hob.* 23. If Writ of Error, Coſts *per Stat. Hen.* 7. no Coſts in any other Inſtance. *Skinner* for Defendant *Creſpin*.

Jones *againſt* Davies and his Wife, in Treſpaſs and Aſſault. Eaſter 22 Geo. 2.

DEfendants had pleaded to two Aſſaults, *&c.* laid in the Declaration, ſeveral Matters, by Leave of the Court, *viz.* an Accord with Satisfaction by the Huſband; That what the Wife did was in Aid of her Huſband; Not guilty; and *Son Aſſault demeſne*. On Trial the Verdict was on the two firſt mentioned Pleas for the Defendants, Reſidue for Plaintiff, without any Damages; no Certificate from the Judge, that Defendants had probable Cauſe to plead the two laſt mentioned Pleas. The Court thought they had no diſcretionary Power, but are bound by the Statute 4th Qu. *Anne*, as the Judge has not certified. Rule abſolute, that Plaintiff have Coſts occaſioned by the two later Pleas, and that the ſame be deducted out of Coſts allowed Defendants. *Skinner* for Plaintiff; *Belfield* for Defendants.

Moorhouſe *againſt* Barham. Hilary 23 Geo. 2.

DEfendant had obtained a Treaſury Rule for Taxation of Plaintiff's Attorney's Bill, at Peril of Coſts. On Plaintiff's Application to the Court to diſcharge the Treaſury Rule, the Court ordered the Bill to be taxed as between Attorney and Client, at Peril of Coſts. *Poole* for Plaintiff; *Bootle* for Defendant.

Cremer *againſt* Dent. Eaſter 24 Geo. 2.

FOUR Iſſues were joined on four ſeveral Pleas in Bar to an Avowry, three of which were found for the Plaintiff, and the fourth for the Defendant. The Judge before whom the Iſſues were tried not having certified, under the Statute 4 Queen *Anne*, That Plaintiff had probable Cauſe to plead the fourth Plea in Bar; Defendant moved for Coſts as to the fourth Plea, and obtained a Rule to ſhew Cauſe. The Judge, after the Motion, and before Cauſe ſhewn, certified in Plaintiff's Favour; whereupon the Rule was diſcharged, and Plaintiff ordered to pay Defendant Coſts of the Application.

N. B. The Certificate is not required by the Statue to be made in Court at the Trial. *Prime* for Plaintiff; *Poole* for Defendant.

Yates *againſt* Gun and his Wife. Mich. 25 Geo. 2.

AFTER Iſſue and Demurrer joined, Plaintiff proceeded to try the Iſſue, and recovered a Verdict; afterwards the Demurrer was argued, and the Court gave Judgment thereupon for Defendant. Plaintiff moved for Coſts of the Trial. The Court ordered the Prothonotary to tax Coſts on both Sides, and that Plaintiff's Coſts of the Trial be deducted out of Defendant's Coſts, if Defendant's Coſts exceed Plaintiff's; if Plaintiff's Coſts exceed Defendant's, Defendant to pay Plaintiff's Exceedings. *Poole* for Plaintiff; *Bootle* for Defendant.

Bligh and another, Executors, *againſt* Cope. Mich. 25 Geo. 2.

DEfendant pleaded to Plaintiff's Action his Diſcharge as a Fugitive, under the inſolvent Debtors Act 16th *George* 2. Plaintiffs not content with Judgment and Execution as to future Effects, to have Execution againſt Defendant's Perſon, replied and took Iſſue, that Defendant was not a Fugitive beyond the Seas within the Statute; and on Trial a Verdict was found for Defendant; whereupon *Prime*, for Defendant, moved for Treble Coſts, purſuant to ſaid Statute; which Statute doth not in Words extend to Executors; the Diſcharge was obtained in 1743, ſubſequent to Teſtator's Death; and Plaintiffs the Executors were ſummoned, and had an Opportunity of controverting the Fact at the Seſſions. The Serjeant inſiſted, That though this Action could not have been ſupported by Plaintiffs in their own Right, without ſuing in the Capacity of Executors, yet as they have made themſelves Principals, by putting in Iſſue a Fact which happened ſince the Teſtator's Death, they have made themſelves liable, and ought to pay the Treble Coſts. A Rule was made to ſhew Cauſe; which was afterwards diſcharged, on hearing *Willes* and *Agar* for the Plaintiffs. The Court held, that the Rule, as to Fugitives and inſolvent Debtors, muſt be the ſame; that if the Executors are liable to any, they are liable to Treble Coſts; but the uniform Conſtruction of Law has conſtantly been, that where an Executor can bring the Action in his own Right, and yet brings it *quatenus* Executor, there, if he fails, he ſhall pay Coſts; but if he could not bring the Action otherwiſe than *quatenus* Executor, though he fails, he ſhall pay no Coſts. Executors have been excuſed from Coſts, becauſe they are obliged to get in the Teſtator's Effects, and cannot be ſuppoſed to be quite cogniſant of his Rights; they act *in autre Droit*; the Cauſe of Action aroſe in Teſtator's Life-time; this Act is not diſtinguiſhable from Conſtructions of former Statutes; an Executor is not conſidered as a Plaintiff, but as a Repreſentative. There has been a like Determination in the Court of King's Bench, where the Defendant applied for Double Coſts on the *Mint* Act. *Hitchcox*, Executor, againſt *Gale*, *Mich.* 13 *George* 2.

Tiffin *againſt* Glaſs. Hil. 25 Geo. 2.

THIS was an Action for ſlanderous Words; ſeven Sets were put into the Declaration; the firſt Set as follows, He (Plaintiff) has done ſuch Things as I (Defendant) could hang him for, if the Truth was known; the following Sets were of like Import. 'Twas laid, that Plaintiff was a Blackſmith by Trade, and that *Philip Parker* Senior and *Philip Parker* Junior, two of his Cuſtomers, by Reaſon of publiſhing the Words, had diſcontinued to deal with him as before. Verdict was found for

Plaintiff, as to the firſt Set of Words, Damages 1 *s.* as to four other Sets, Defendant was found Not guilty; but as to the remaining two Sets, and the Special Damage, no Finding of the Jury appeared. The Queſtion was, Whether Plaintiff ſhould have Coſts *de incremento*, or no more Coſts than Damages?

Per Curiam: In *Turner* againſt *Horton*, *Eaſter* 16 *Geo.* 2. all the Caſes relative to this Point were taken into Conſideration. Where Words are of themſelves actionable, the Special Damage makes no Alteration, except by way of Aggravation; where Words are not in themſelves actionable, the Special Damage is the Jet of the Action. Anciently, perhaps, when Words were taken *in mitiori ſenſu*, theſe Words might not be thought actionable; but in later Times it has been otherwiſe adjudged, for Preſervation of the Peace; and becauſe Words are to be legally underſtood as the By-ſtanders, and all the World underſtand them. Theſe Words ſeem rather to be actionable than otherwiſe. The Court cannot preſume that the conſequential Damage was found. Though no Motion has been made in Arreſt of Judgment, yet had it been plain that the Words were not actionable; the Court ought not to give Judgment; but where 'tis not plain, and the Court incline to think the Words actionable, Judgment ought not to be ſtayed. Where, on Trial, Words plainly appear not to be actionable, and no Special Damage interferes, Plaintiff ought to be nonſuited, that Defendant may have Coſts, which in Arreſt of Judgment he cannot have. The Court will not refine on a good Statute 21 *Jac. c.* 16. againſt its obvious Intent. Rule to ſhew Cauſe why Plaintiff ſhould not be allowed Coſts *de incremento* diſcharged. *Prime* for Plaintiff; *Agar* for Defendant.

Barrowclough *againſt* Webſter and Smith, in Aſſault and Battery. Eaſter 25 Geo. 2.

BOTH Defendants plead Not guilty; and Defendant *Webſter*, by Leave of the Court, pleads alſo *Son Aſſault demeſne*. Verdict for Plaintiff againſt both Defendants on the Not guilty, and for Defendant *Webſter* on the *Son Aſſault*; Damages as to *Smith* 9 *s.* Two Certificates were ſigned on the Record of *Niſi prius* by the Lord Chief Baron, who tried the Cauſe; one, that the Aſſault and Battery was ſufficiently proved; the other, that there was a probable Cauſe for making *Webſter* a Defendant.

Webſter moved for Coſts on *Stat.* 4 *Ann.* which doth not extend to this Caſe; nor *Stat.* 9 *Will.* 3. as held by the Court. Coſts denied. *Prime* for *Webſter*.

Bright *againſt* Jackſon and others, in Replevin Trin. 25 & 26 Geo. 2.

PLaintiff had pleaded, by Leave of the Court, two ſeveral Matters in Bar to the Avowry, by way of Preſcription for Right of Common, *&c.* And on one of the Pleas the Fact was found for him; but there being no Certificate from the Judge who tried the Cauſe, that Plaintiff had probable Cauſe to plead the other Plea, Defendants moved for Coſts occaſioned thereby, purſuant to *Stat.* 4 Qu. *Anne.* The Queſtion was, Whether theſe Proceedings are within that Statute or not? The Avowant in Replevin is omitted in the Words of the Statute. Rule to ſhew Cauſe why Plaintiff ſhould not pay Coſts, enlarged. *Prime* for Defendant; *Poole* for Plaintiff.

Gregory *againſt* Dormer. Mich. 26 Geo. 2.

THIS was an Action for ſeveral Treſpaſſes, *(inter al')* a Treſpaſs in *Stock Orchard* and *Rye Cloſe*, with Cattle, and bruiſing, preſſing and ſpoiling Plaintiff's Apples, *(viz.)* twenty Buſhels of Apples there *found*. The Cauſe had been tried in *Glouceſterſhire* by a Special Jury of Gentlemen, who found for Plaintiff as to the particular Treſpaſs aforeſaid; Reſidue for Defendant. The Queſtion was, Whether Plaintiff ſhould be allowed full Coſts, or not? Court diſcharged Plaintiff's Rule to ſhew Cauſe why he ſhould not have full Coſts. The Apples, for ought that appears by the Declaration, might be growing, though not laid to be *ibidem creſcen'*, but *ibidem invent'*. The Jury had the Merit of the Cauſe before them; the Action appears to be frivolous, by the ſmall Damages they gave. *Willes* and *Poole* for Defendant; *Draper* and *Hayward* for Plaintiff.

Scoffin *againſt* Robinſon, in Treſpaſs. Eaſter 26 Geo. 2.

PLaintiff, at laſt Aſſizes for *Kent*, recovered a Verdict againſt Defendant; and at the ſame Aſſizes, in an Ejectment, on the Demiſe of *Robinſon* (Defendant in this Action) againſt *Scoffin* (Plaintiff in this Action) Plaintiff recovered a Verdict. *Robinſon* applied to have the Coſts he was intitled to, ſet off and deducted out of the Coſts to be allowed *Scoffin*. Rule for that Purpoſe made abſolute. *Willes* for Defendant; *Poole* for Plaintiff.

Mordecai *againſt* Nutting and others, in Treſpaſs, *&c.*

[Omitted in Mich. 23 Geo. 2.]

PLaintiff ſues four Defendants, gets a Verdict againſt one, and the other three are acquitted. On an Affidavit that Plaintiff is an itinerant *Jew* and poor, Defendants who were acquitted obtained a Rule to ſhew Cauſe, why their Coſts ſhould not be deducted out of what Prothonotary ſhould allow Plaintiff for Coſts againſt that Defendant who was found guilty. On ſhewing Cauſe the Court declared the Motion to be unprecedented, and diſcharged the Rule. *Prime* for Plaintiff; *Leeds* for Defendants.

Owſton *againſt* O Bryan. Trin. 27 & 28 Geo. 2.

DEfendant paid Money (about 37 *l.*) into Court on the common Rule; Plaintiff proceeded to Trial, and recovered a larger Sum, and afterwards became a Bankrupt; the Aſſignees of Plaintiff's Effects under the Commiſſion, moved to have the Money paid out of Court to them; which was oppoſed by Mr. *Ward* Plaintiff's Attorney, who ſubmitted Whether he who had been the Inſtrument of recovering the Verdict, ought not to be firſt paid his Bill of Coſts? Rule to refer *Ward*'s Bill to the Prothonotary to be taxed, *Ward* to allow 7 *l.* 4 *s.* received by him of Plaintiff in Part, and then to be paid out of the Money in

Court, Reſidue to be paid the Aſſignees. *Prime* for *Ward*; *Poole* for the Aſſignees.

Roberts *againſt* Biggs and others.

RULE made abſolute, That Preceedings on final Judgment ſigned in this Cauſe be ſtayed, and that 17 *l.* 11 *s.* Damages and Coſts thereby recovered be allowed to Defendant *Biggs*, towards Payment of the larger Sum of Money recovered in an Action brought by him [*Biggs*] againſt *Roberts*, wherein Defendant [*Roberts*] having been arreſted by one *Richard Bellamy*, *John Bradley* Junior, and *George Smithurſt* (as *Bellamy*'s Aſſiſtants) for 41 *l.* 2 *s.* 0 *d.* upon Promiſe, was reſcued by his Wife and one *George Platts* his Brother in Law, and thereby made his Eſcape to his own Houſe; Plaintiff and the Officers purſued but could not retake him, Defendant abſconding, Plaintiff ſued out Proceſs of Outlawry, Defendant appeared to the Exigent, and the Cauſe being at Iſſue was tried at *Nottingham* Spring Aſſizes 1754, wherein Plaintiff recovered for Damages and Coſts 70 *l.* 10 *s.* 0 *d.* *Roberts* brought this Action againſt *Biggs*, *Bellamy* and *Bradley*, in Treſpaſs, for that they (together with *Smithurſt*) broke and entred his Houſe, and diſturbed him and his Family inhabiting therein; which Cauſe being at Iſſue was alſo tried at ſaid Spring Aſſizes, and the Jury gave Plaintiff 1 *s.* Damages. Mr. Juſtice *Birch*, who tried the Cauſe, certifying, that the Treſpaſs was wilful and malicious, Plaintiff *Roberts* became entitled to his Coſts, which Damages and Coſts amounted to 17 *l.* 11 *s.* 0 *d.* *Willes* for Defendants; *Prime* and *Poole* for *Roberts*.

Bright *againſt* Jackſon, in Replevin. Hil. 28 Geo. 2.

THE Avowant applied, under the Stat. 4 *Q. Ann.* for the Amendment of the Law, for Coſts; ſome of the Iſſues joined on ſeveral Pleas in Barr to the Avowry pleaded by Leave of the Court being found for him, and no Certificate by the Judge that ſuch Pleas were material, the Word [*Avowant*] happens to be omitted in the Stat. though the Words [*Defendant, Tenant, and Plaintiff,*] are inſerted; an Avowant is in the Nature of a Defendant, and plainly within the Meaning and Intent of the Statute. Rule abſolute, that Prothonotary ſhall tax Avowant's

Coſts on the Pleas found for him, and that the ſame be deducted out of Coſts allowed Plaintiff. *Prime* for Avowant; *Willes* and *Poole* for Plaintiff.

Eaſt *againſt* Nonelly, in Replevin. The ſame Caſe, Goodright on Demiſe of Larmer *againſt* Searle, in Ejectment.

UPON Affidavit of Death of the Leſſor of Plaintiff, a Rule was made, That Plaintiff's Attorney ſhould ſhew Cauſe why Proceedings ſhould not be ſtayed till ſome Perſon gives Security for Defendant's Coſts, if any ſhall be adjudged to him. The Court, upon hearing Counſel on both Sides, thought Security ought to be given, and thereupon Mr. *Limbrey* Plaintiff's Attorney undertaking for Payment of ſuch Coſts, the Rule was diſcharged. *Hewitt* for Defendant; *Poole* for Plaintiff's Attorney.

Barker Eſquire, and Cooke Eſquire, *againſt* the Biſhop of London, Lomax Eſquire, and Bellamy Clerk. In quare impedit.

A Bill of Coſts delivered by Mr. *Cooling* as Attorney for Defendant *Bellamy*, amounting to 165*l.* 15*s.* having, at the Inſtance of Defendant *Bellamy*, been referred to Mr. Prothonotary *Wegg* to be taxed, and leſs than a ſixth Part, *viz.* 25*l.* 13*s.* 10*d.* having been deducted on Taxation, *Cooling* had moved for Coſts of the Taxation, and the Rule for thoſe Coſts was drawn up abſolutely. Defendant *Bellamy* applied to diſcharge that Rule; and upon hearing Counſel on both Sides, the Court diſcharged the former Rule, as unprecepented; it ſhould have been drawn up to ſhew Cauſe, not abſolutely; but a new Rule was made, Ordering Defendant *Bellamy* to pay *Cooling* Coſts of the Taxation. By *Stat.* 2 *Geo.* 2. if a ſixth Part of an Attorney's Bill be deducted, the Court are not left to their Diſcretion, but are obliged to award Coſts of the Taxation againſt the Attorney; where a ſixth Part is not deducted, the Court are left to their Diſcretion. The Statute is a good Guide, what it directs in one Caſe ſeems to be a right Rule in the other; ever ſince the Statute, Coſts of Taxation have been reciprocally given to the Party charged, and to the Attorney, as a ſixth Part has, or has not, been taken off. *Prime* for Defendant *Bellamy*; *Draper* for *Cooling*.

Lloyd Eſquire, *againſt* Winton, in Replevin. Mich. 29 Geo. 2.

PLaintiff declared for taking and detaining an Ox; Defendant avowed the Taking as a Seizure for a Heriot Cuſtom, (claiming no Right to diſtrain.) After a Nonſuit Mr. Prothonotary *Cooke* had allowed Defendant double Coſts, taking the Caſe to be within the *Stat.* 11 *Geo.* 2. giving Avowants double Coſts; Plaintiff moved that the Prothonotary might review his Taxation. Rule for that Purpoſe made abſolute. The Avowry not being for taking the Ox as a Diſtreſs is out of the Statute; for Heriot Service, Cattle, *&c.* are diſtrainable, for Heriot Cuſtom not. *Poole* for Plaintiff; *Wilſon* for Defendant.

Seed *againſt* Wolfenden, in Prohibition. Hil. 29 Geo. 2.

IT was at Defendant's Inſtance made Part of the Rule, whereby a Writ of Prohibition was granted, That Plaintiff ſhould declare in Prohibition; Defendant afterwards demanded a Declaration, and threatned a *Non Pros* for want thereof; whereupon Plaintiff's Agent prepared a Declaration; when 'twas ready he was told by Defendant's Agent that he need not deliver it; but as he had been at the Trouble and Expence of preparing a Declaration, Plaintiff's Agent delivered the ſame to Defendant's Agent, and called for a Plea: Defendant pleaded nothing to the Merits, but only that he did not proceed in the Spiritual Court after the Prohibition, gave a Rule to reply, and demanded a Replication; whereupon Plaintiff applied to the Court, and obtained a Rule for Defendant to ſhew Cauſe why he ſhould not pay Plaintiff's Coſts of the Proceedings in Prohibition; which Rule was now made abſolute. The Court looked upon the Plea to be a ſham nugatory Plea, not being to the Merits of the Cauſe; the Allegation that Defendant has proceeded contrary to the Prohibition, is and muſt be put into every Declaration of this Kind, but whether he has ſo proceeded or no, is totally immaterial. The

Stat. 8 & 9 *Will.* 3. *Ch.* 10. *Sect.* 3. gives Coſts after Plea or Demurrer, but this is not a Plea within the Statute. *Prime* for Plaintiff; *Poole* for Defendant.

Lloyd *againſt* Day. Trin. 32 & 33 Geo. 2.

TWO Counts in declaration for different Treſpaſſes in different Places, Defendant pleaded ſeveral Juſtifications, and on Trial all the Iſſues were found for Defendant, except an Iſſue on Not guilty to the Novel Aſſignment which was found for Plaintiff, Damages 1 *d.* Coſts 1 *d.* On Plaintiff's Application for the *Poſtea* it was ordered to be delivered to him, and he was ordered to bring it into Court; after *Poſtea* brought in, Defendant obtained a Rule to ſhew Cauſe why Prothonotary ſhould not Tax his Coſts on the Iſſues found for him. Upon hearing Counſel on both Sides, the Court held that Defendant was not entitle o Coſts, and that Plaintiff could have no more Coſts than Damages. The Plea of Not guilty's being to the Novel Aſſignment makes no Difference. *Nares* and *Davy* for the Defendant; *Hewitt* for the Plaintiff.

Thruſtout on the Demiſe of Wilſon, D. D. *againſt* Foot, Widow and others, in Ejectment. Eaſter 33 Geo. 2.

A Verdict at the Aſſizes was found for Plaintiff againſt Defendant, *Foot*, Widow, who on the Trial appeared, and confeſſed Leaſe, Entry and Ouſter, the other Defendants did not appear, and confeſs, thereupon they according to the uſual Practice in ſuch Caſe were found Not guilty. Plaintiff obtained Leave of the Court to take out Execution, *i. e.* a Writ of *Habere facias Poſſeſſionem* on the Judgment againſt the Caſual Ejector as to them, and got his Coſts taxed on the *Poſtea*, for which Coſts he thereby could only have Remedy againſt Defendant, *Foot*, Widow. He then moved, that Prothonotary ſhould Tax his Coſts againſt Defendant, *Goodere Foot*, Clerk, (one of the Defendants who did not appear and confeſs) on the common Rule by Conſent entred into for him, whereon a Rule was firſt made to ſhew Cauſe, and now abſolute. *Nares* for Plaintiff; *Hewitt* for Defendant *Goodere Foot*.

Wright on the Demiſe of Burrell and others *againſt* Pelham, Eſquire, in Ejectment. Eaſter 30 Geo. 2.

AT *Lincolnſhire* Aſſizes, —— this Cauſe was made a *Remanet* by Conſent, at Summer Aſſizes 1756 'twas tried, and Plaintiff obtained a Verdict, Plaintiff moved that Prothonotary in his Taxation might allow the Coſts of the former Aſſizes, when the Cauſe was made a *Remanet* upon Affidavit of five Perſons, that 'twas then agreed theſe Coſts ſhould attend the Event of the Trial; a *King's Bench* Caſe was quoted, *Standen* on the Demiſe of *Wheatley* and others againſt *Hall*, in Ejectment, wherein that Court lately confirmed the Maſter's Allowance of the Coſts of a *Remanet*, and 'twas ſaid that in *Quo Warranto* Cauſes this is always done. On Defendant's Part the Agreement as to the Coſts of the former Aſſizes attending the Event of a future Trial, was denied by ſeveral Perſons preſent, Plaintiff himſelf had drawn up the Order of Aſſizes then made, wherein no ſuch Clauſe was inſerted, and made it a Rule of this Court. The Practice here is not to allow the Coſts of a former Aſſizes when the Cauſe is made a *Remanet*, unleſs by Conſent of Parties expreſſed in a Rule or Order, entred into for that Purpoſe. Rule to ſhew Cauſe as prayed on the firſt Motion diſcharged. *Poole* and *Forſter* for Plaintiff; *Prime* and *Hewitt* for Defendant.

Trinity 31 Geo. 2.

IN Action of Debt on Statute *Edw.* 6. for not ſetting forth Tythes in which Treble the Value is recovered, Coſts are given where the ſingle Value found by the Jury, doth not exceed twenty Nobles, *per* Statute 8 & 9 *Will.* 3. *Ch.* 10. *Sec.* 3.

In the Spiritual Court double the Value is recoverable with Coſts.

In Courts of *Weſtminſter*, Treble the Value with Coſts, if the ſingle Value exceeds not twenty Nobles; without Coſts, if the ſingle Value exceeds twenty Nobles.

N. B. This was found to be ſo upon looking into the Practice by the three Prothonotaries; but did not come before the Court.

Whitham *againſt* Hill and others. Eaſter 32 Geo. 2.

ACTION on the Statute of 1 *Geo.* 2. *Ch.* 5. againſt Riots, Declaration ſets forth, Whereas divers Perſons to the Number of Twelve and more, did unlawfully, riotouſly, *&c.* aſſemble, *&c.* and being ſo, *&c.* did with Force, *&c.* demoliſh a certain Dwelling-Houſe of the ſaid Plaintiff contrary to the Form, *&c.* States Defendants Inhabitants of the Hundred. Damages laid 300 *l.* Judgment by Default. Inquiry Damages 90 *l.* Motion for Coſts.

Mr. Serjeant *Hewitt.* No Coſts before Statute *Glouceſter*, 13 *Edw.* 1. this to hold Place in all Caſes where Damages are to be recovered, though given after the Statute 2 *Inſt.* 228-9. 10 *Co.* *Pinfold*'s Caſe ſeems to contradict this Doctrine, becauſe 'tis there ſaid, that where a Statute gives Damages where none were before, Party ſhall not have Coſts; but the 8 *Geo.* 2. mentions Coſts where it directs how the Money is to be diſtributed. Where there are double Damages there the Party hath no Coſts. There is a Diſtinction taken between a Statute of Creation and of Addition; but no Foundation for it, the Statute of Hue and Cry gives no Coſts; but directs the Recovery of the Money; there the Party ſhall have Coſts. 'Tis true 'tis not ſo in *Quare imp.* There is a Diſtinction between Penal Statutes and others. In the Writ of *Noctanter*, 2 *Saunders* 374-8, *Boyd* againſt *Hundred* of *Exminſter*, *Trin.* 2 *Geo.* 2. Judgment, *Trin. Roll.* 1051, Damages, Coſts, and increaſed Coſts. Mr. Serjeant *Poole e Contra.* *Willes* Chief Juſtice: It is very plain, Plaintiff intitled to Coſts. 1. By Statute *Glouceſter*. 2. On Word Damages. 3. Reaſon of Thing, and Meaning of Act. 4. Similitude of Statute Hue and Cry.

1. The Words —— whenever Plaintiff recovers Damages, he ſhall likewiſe have Coſts of the Writ purchaſed, this is whether on precedent or ſubſequent Statute. When Lord *Co.* commented no Caſe had happened; but he takes it for granted.

2. So by Word Damages, and ſuch a Conſtruction is put on the Statute of Hue and Cry, and ſo the Statute 8 *Geo.* 2. *C.* 16.

3. If not it was only a partial Remedy, Entries are *pro Miſis*, *& Cuſtag'*, and then comes *quæ quidem Dam.* which takes in both. The firſt Statute of Hue and Cry mentions only Damages. There are two Caſes. Caſe in *Saunders* ſeems an Authority in

Point and the Caſe in *B. R. Pendred* againſt *Hundred* of *Oſweſtry*. All the Caſes of Double and Treble Damages out of the Caſe. So then in the Caſe of Penalties *(Lutwiche) Sedgwick qui tam*, &c. againſt *Richardſon* 'tis ſaid where Penalty certain, there ſhall be Damages that not Law. *Pinfold*'s Caſe very extraordinary after what is ſaid in 2 *Inſt.* As to Action on ſubſequent Statute, that makes no Difference, *Wilſon* againſt *Rawſon*, *Trin.* 21 *Geo.* 2. *B. R.*

Clive Juſtice: This a new Queſtion never determined, the laſt Caſe quoted never mentioned before to the Court. Coſts *de Incremento* ſince Statute of *Glouceſter*. Now as to the Words of the Writ purchaſed, it hath been held that extends to full Coſts, then the Words are in every Caſe where Damages are given; but that is too general, becauſe 'tis certain that though Damages are given on Waſte no Coſts *de Incremento*, ſo in *quare imp.* therefore I think what is ſaid by Lord *Co.* in *Pinfold*'s Caſe is right as to Statutes creative of Damages or not, no Difference whether Double or Single. But I think this Statute not a creative Act, for pulling down an Houſe, an Action for Damages would lie at Common Law. This Action only changes the Perſon liable; therefore according to all the Caſes Plaintiff intitled to Coſts, and 'tis plain this the ſame as Statute of Hue and Cry. Therefore I think Plaintiff intitled to Coſts.

Bathurſt Juſtice: The Statute on which this Action brought refers to Statute of Hue and Cry. 'Tis ſaid all the Judgments as to Hue and Cry paſſed, *ſub Silentio*, I think that could hardly be; but whenever it was ſettled it muſt have been by Motion as this is, therefore it never would appear on Record. If the Statute of Hue and Cry had been *Res integra*, I ſhould have ſome Doubt; but think I could diſtinguiſh; but poſſibly the Party might have had an Action againſt the *Hundred* for not keeping Watch and Ward; but however the Statute of Hue and Cry ſays, the Party ſhall recover the Money he was robbed of, and Damages; now Damages there muſt mean Coſts. I am very unwilling to ſhake the Doctrine laid down by Lord *Coke*.

Noel Juſtice: I ſhall determine on the Statute on which the Action brought, referring to the Statute of Hue and Cry, and Coſts have always been given on that Statute. The Statute of the 8 *Geo.* 2. hath recognized the Law as to Coſts.

Willes Chief Juſtice: The Party to have his Coſts.

Stoddard

Stoddard *againſt* Launder and others. Tri. 33 Geo. 2.

THIS Cauſe which had been formerly put off at the Aſſizes for Want of a View, after a View had, was carried down to Trial again at laſt Summer Aſſizes, and was then left untried by the Judge, and made a *Remanet* for Want of Time. At laſt Aſſizes the Cauſe was tried, and Plaintiff who obtained a Verdict moved the Court, that the Prothonotary on Taxation of Coſts on the Verdict ſhould allow Plaintiff Coſts of the former Aſſizes, when the Cauſe was made a *Remanet*. Plaintiff's Counſel quoted a Caſe in the *King's Bench*, *Eaſter* 22 *Geo*. 2. *Standley* on the Demiſe of *Wheatley* againſt *Hall*, in which the Maſter reported, "That where a Cauſe is made a *Remanet*, and neither Party to "blame, the Coſts of the former Aſſizes are allowed after a Verdict "for the Plaintiff or Defendant at the ſubſequent Aſſizes." Rule to ſhew Cauſe granted, which Rule was afterwards diſcharged, the three Prothonotaries all reporting the Practice of this Court to be otherwiſe, *Per Cur'*: A particular Inconvenience muſt ſubmit to the ſtanding Practice; but it may be proper to confer with the Judges of the other Courts, in Order to bring about a Uniformity. *Nares* for Plaintiff; *Hewitt* for Defendant.

Damages.

Burton *againſt* Baynes. Mich. 7 Geo. 2.

THIS was an Action for an Aſſault, Battery, and Mayhem, which was tried at the laſt Aſſizes for the County of *Lincoln*, and Plaintiff obtained a Verdict for 11 *l*. 14*s*. Damages. Plaintiff, who by the Aſſault had almoſt loſt the Sight of one of his Eyes, thought the Damages too ſmall, and moved the Court that they might be increaſed upon View of the Party; and a Rule was made to ſhew Cauſe; and upon View of the Party, and the Examination of *John Moor*, a *Surgeon*, *ore tenus* in open Court, and hearing Counſel on both Sides, the Damages were increaſed by the Court from 11*l.* 14*s.* to 50*l.*

Southeby *againſt* Day and others. Hill. 7 Geo. 2.

THIS was an Action of Treſpaſs for cutting down and carrying away twenty Trees of Plaintiff's. As to twelve of the Trees Defendants juſtified for Eſtovers; and as to the remaining eight pleaded Not guilty, and two ſeparate Iſſues were joined thereupon. At the Trial the Merits were fully determined as to the Iſſue joined upon the Juſtification for Eſtovers; but Plaintiff gave no Evidence upon the Not guilty, and no Notice being taken thereof, the Jury found a Verdict for Plaintiff generally, and gave 5*s.* Damages, but omitted to acquit Defendants on the Not guilty; whereupon Defendants moved to ſet aſide the Verdict, and obtained a Rule to ſhew Cauſe, which was afterwards diſcharged on hearing Counſel on both Sides. The Verdict appearing to be juſt, and the Damages moderate, the Court would not overturn the Verdict; but left Plaintiff to enter up his Judgment as he ſhould be adviſed. *Baynes* for Defendants; *Chapple* for Plaintiff.

Donelly *againſt* Baker, in Aſſault and Battery. Mich. 18 Geo. 2.

BOOTLE, for Pliantiff, moved to ſet aſide Inquiſition taken on Writ of Enquiry, for Smallneſs of Damages; the Jury found 8*l.* only, though Defendant's Cure by a Surgeon was proved to be worth Eighteen Guineas, and though no Witneſs was produced by Defendant to controvert the Fact. The Court refuſed to make any Rule.

Demurrer and other Special Arguments.

Browne *againſt* Kidney. Eaſt. 8 Geo. 2.

A Feoffment paſſes, or at leaſt extinguiſhes all collateral Rights, and a Right to a Way is extinguiſhed by it. Held *per Cur'* on Demurrer.

Hunt *againſt* Puckmore. Eaſt. 10 Geo. 2.

PLaintiff declared againſt Defendant as Heir, in Debt, on the Anceſtor's Bond. Defendant pleaded *Riens per Deſcent.* Plaintiff replied Aſſets. Defendant demurred to the Replication, and Plaintiff joined in Demurrer, and the Cauſe was ſet down to be argued. *Hawkins* for Defendant moved for Leave to withdraw the Demurrer, and rejoin iſſuably on Payment of Coſts, and obtained a Rule to ſhew Cauſe. Plaintiff on ſhewing Cauſe inſiſted, that by the Demurrer he had been delayed an Aſſizes, and Defendant now came too late to withdraw his Demurrer, unleſs he would give Judgment for Plaintiff's Security. *Hawkins* urged a Diffidence of his own Opinion as to the Validity of the Pleadings, and was fearful to venture the Argument, becauſe, if Judgment had paſſed againſt his Client on Demurrer, the Debt muſt be paid out of Defendant's own Goods; if on Verdict out of Aſſets. The Court made the Rule abſolute. Mr. Juſtice *Denton* contra. *Wright* for Plaintiff.

Corderoy *againſt* Reynoldſon. Mich. 11 Geo. 2.

IN Cauſes in the Paper on Points reſerved, Plaintiff's Counſel is to begin the Argument. *Hawkins* for Plaintiff; *Draper* for Defendant.

Langton *againſt* Tuckwell. Mich. 12 Geo. 2.

GIRDLER moved to ſet aſide the Rule for a *Conſilium*, no Joinder in Demurrer having been delivered under Counſel's Hand. On ſhewing Cauſe it appeared that Defendant's Attorney had accepted and paid for the Paper Book wherein Plaintiff had joined in Demurrer ſo long ago as *June* laſt, and that the Joinder was at that Time actually ſigned by Counſel. No Objection was made till the Day before the Time appointed this Term for Argument. *Skinner* for Plaintiff. Rule diſcharged with Coſts.

Pearſon *againſt* Roberts and Groom, in Replevin. Eaſter 28 Geo. 2.

THIS was an Action of Replevin brought by Plaintiff againſt Defendants for their taking a Gelding of Plaintiff's, and detaining him againſt Gages, *&c.*

Whereto Defendants pleaded the general Iſſue; and the Cauſe came on to be tried before Mr. Juſtice *Deniſon* at Lent Aſſizes for the County of *Bedford*, *March* 17, 1754.

Upon the Trial the Caſe appeared to be, that Defendants were Surveyors of the Highways in and for the Pariſh of *Eaton Bray* in the County of *Bedford* in the Year 1753.

That Plaintiff was in that Year an Inhabitant of ſame Pariſh; and following the Trade or Employment of a Miller and Badger, occupied a Water Corn Mill and ſome Lands within ſaid Pariſh, of the yearly Value of 22 *l.* at and under that Rent only.

That Plaintiff in that Year kept and uſed in ſaid Pariſh two Carts, two Waggons, and ten Horſes, in his Buſineſs of a Miller and Badger, and in carrying of Goods for Hire, and in Huſbandry.

That ſix Days were duly appointed, and due Notice thereof given for the Pariſhioners of ſaid Pariſh to come into the Highways, and do their Duty therein reſpectively, purſuant to the Proviſions of the ſeveral Statutes in that Behalf made.

That purſuant to ſuch Appointment and Notice, Plaintiff duly attended in the Highways with one Wain or Cart, furniſhed after the Cuſtom of the Country, *(viz.)* with three Horſes and two Men, on every of ſaid ſix Days.

But Defendants inſiſting that Plaintiff ought to have done Duty with two Wains or Carts, furniſhed after the Cuſtom of the Country, *(viz.)* with three Horſes and two Men each, made Complaint to two of his Majeſty's Juſtices of the Peace in and for ſaid County of *Bedford* againſt Plaintiff; For that he had attended in ſaid Highways with one Wain or Cart furniſhed after the Cuſtom of the Country, *(viz.)* with three Horſes and two Men only. And upon that Complaint, Plaintiff attending to anſwer for himſelf thereunto, ſaid Juſtices did adjudge Plaintiff to have been guilty of a Neglect of Duty in the Premiſſes, and for his ſaid Offence to have forfeited the Sum of 3 *l.* Sterling *(i. e.)* the Sum of ten Shillings for every of ſaid ſix Days, ſo as aforeſaid appointed and notified.

And for levying of ſaid Penalty of 3 *l.* ſaid Juſtices iſſued their Warrant in Writing under their Hands and Seals, directed to Defendants, requiring them forthwith to levy ſaid Sum of 3 *l.* by Diſtreſs and Sale of the Goods and Chattels of Plaintiff.

Purſuant to which Warrant Defendants took and impounded, as a Diſtreſs, ſaid Gelding of Plaintiff's, in order to ſell ſame for the Purpoſe in ſaid Warrant mentioned; upon which Plaintiff levied his Plaint in Replevin (wherein ſaid Action was to be determined) without having firſt demanded in Writing the Peruſal or Copy of ſaid Warrant. The Queſtions for the Conſideration of the Court were,

Firſt, Whether Plaintiff was by Law compellable to go with or ſend into the Highways, in *Eaton Bray* aforeſaid, in ſaid Year 1753, more than one Wain or Court on every of ſaid ſix Days abovementioned?

And if not,

Secondly, Whether Plaintiff, before the Commencement of this Action, ought not to have demanded in Writing a Copy or Peruſal of ſaid Warrant of ſaid Juſtices?

If the Court ſhould be of Opinion, that Plaintiff was not compellable to go with or ſend into the Highways aforeſaid, more than one Wain or Cart, on any of ſaid ſix Days abovementioned; and that it was not neceſſary for Plaintiff to have demanded in Writing a Copy or Peruſal of ſaid Warrant; then Plaintiff was to have the *Poſtea* delivered to him, *&c.* otherwiſe ſaid *Poſtea* was to be delivered to the Defendant, *&c.*

The Court gave Judgment on the firſt Point for Plaintiff, being of Opinion that Plaintiff was not compellable to ſend into the Highways more than one Wain or Cart. He that has a Plough-Land (which by *Stat.* 7 & 8 *Will.* 3. *Ch.* 29. *Sect.* 57. is explained to be 50 *l. per Ann.*) is not obliged to ſend more than one; Plaintiff farmed 22 *l. per Ann.* only. A Caſe in 3 *Keble* 567. had been cited by Defendant's Counſel between the King and the Inhabitants of *Fulham*, *Mich.* 27 *Car.* 2. and a Copy of the Proceedings were produced, to ſhew that the Court of *King's Bench* had determined in that Caſe, That every Perſon ought to ſend as many Wains or Carrs into the Highways, as he keeps Teams; but upon looking into the Proceedings no ſuch Determination appeared to have been made. A Caſe cited by Defendant's Counſel from Mr. Juſtice *Raymond*'s Reports 186, was thought obſcure, and to be no Authority. *Vide* Statutes relating to the Highways. 2 & 3 *Phil. & Mary Ch.* 8. 5 *Eliz. Ch.* 13. 22 *Cha.* 2. *Ch.* 12. 7 & 8 *Will.* 3. *Ch.* 29.

But on the ſecond Point the Court gave Judgment for the Defendants, being of Opinion that Replevin is an Action within the *Stat.* 24 *Geo.* 2. And that before the Commencement of that Action againſt the preſent Defendants the Officers, Plaintiff ought to have demanded in Writing a Copy or Peruſal of the Warrant; for want of which Demand his Action cannot be ſupported.

Plaintiff's Counſel obſerved, That if Replevin is deemed to be an Action within ſaid *Stat.* 24 *Geo.* 2. which, where the Action is intended to be brought againſt the Juſtices of the Peace, requires a Month's previous Notice, great Inconvenience muſt ariſe; becauſe the Cattle diſtrained would probably be ſtarved and die before they could be replevied. To this the Court anſwered, That perhaps a mandatory Writ to the Sheriff, or a Plaint in Replevin in his Court, may not be looked upon as an Action within the ſaid Statute; but the Suit in this Court in Replevin for Damages, is an Action within ſaid Statute. Replevin is called an Action in *Stat.* 9 *Hen.* 8. and a Suit in *Stat.* 17 *Cha.* 2.

The *Poſtea* was ordered to be delivered to Defendants.

Gardiner *againſt* Jeſſop, Gent. one, &c. Hil. 30 Geo. 2.

DEfendant being an Attorney of this Court, was ſued as ſuch by Bill in this Action for a Debt under 40 *s.*

Defendant pleaded under the County Court of *Middleſex* Act, that the Action being for a Debt under 40*s*. and Plaintiff and Defendant both reſiant within the Juriſdiction of the ſaid County Court, the Action ought to have been brought there; to this Plea Plaintiff demurred, and Defendant joined in Demurrer; upon Argument the Demurrer was over-ruled, and Judgment given for Plaintiff, the Court being of Opinion that Defendant was properly ſued here in reſpect of Privilege, though for a Debt under 40*s*. had he been ſued in the County Court, he might there have pleaded his Privilege as an Attorney of this Court. *Davy* for Plaintiff; *Hayward* for Defendant.

Norden, Aſſignee, &c. *againſt* Horſley. Eaſter 30 Geo. 2.

ACTION of Debt on Bail-Bond in the Penalty of 24*l*. 18*s*. which was more than double the Sum of 12*l*. ſworn due, for which by Indorſement on the Writ, Bail was to be taken, Defendant pleaded that the Bond was void, *per* Statute 12 *Geo.* to prevent frivolous and vexatious Arreſts. To this Plea Plaintiff demurred, and Defendant joined in Demurrer. After Argument the Court gave Judgment for the Plaintiff, holding the Bail-Bond not to be made void by the Statute. The making of the Penalty exactly double the Sum ſworn due may be a good Rule. The Act is directory to the Sheriff, and in ſome Reſpects prohibitory, if Defendant is oppreſſed he may complain. If the Penalty exceeding double the Sum ſworn due, ſhould make a Bail-Bond void, Plaintiffs may often be tricked by Colluſion between Defendants and the Sheriff's Officers. *Martin* for Plaintiff; *Davy* for Defendant.

Mackey *againſt* Sutherland, Adminiſtrator, &c. Hil. 31 Geo. 2.

HELD upon Argument of Demurrer, that the calling Defendant Adminiſtrator in the Declaration is a ſufficient Averment of his being ſo, without ſetting out, that Adminiſtration was committed to him, as in 2d Lord *Raymond*, 1510, *Holliday* againſt *Fletcher*, in *Banco Regis*. There is no Difference between the two Courts; the Recital of the Original Writ, (wherein Defendant is called Adminiſtrator) is a Part of the Declaration which might have been denied on this Writ, the Plaintiff counts againſt the ſaid Defendant the Adminiſtrator, and alledges that the Inteſtate in his Lime-time did not pay the Debt, nor the ſaid Defendant the Adminiſtrator ſince his Death. Judgment given for the Plaintiff. *Poole* for the Plaintiff; *Davy* for Defendant.

Hatchett, Gent. one &c. *againſt* Hughes.

DEclaration for Fees, and Buſineſs done in the Courts of *Weſtminſter*, and great Seſſions in *Wales*.

Plea that Plaintiff was not admitted, and inrolled an Attorney of the Court of great Seſſions in *Wales*.

Replication and Demurrer to it.

On Argument the Plea was held to be bad, it amounts only to the general Iſſue, the Replication therefore was out of the Caſe, Plaintiff *per* Statute being an Attorney of this Court, might carry on the Proceedings in another Court, in the Name of an Attorney of that Court. Judgment for the Plaintiff; *Prime* for Plaintiff; *Wilſon* for Defendant.

Dickinſon, Aſſignee, &c. *againſt* Foord. Trin. 32 & 33 Geo. 2.

AT *Ni. Pri.* a Point was reſerved, and a Caſe made for the Opinion of the Court, whereby it was ſtated, That—(againſt whom a Commiſſion of Bankrupt had iſſued, and under which an Aſſignment of his Effects had been made to Plaintiff) having been arreſted, and the Sheriff's Officer having taken his Word to put in Bail kept at Home, and declared he did ſo to avoid the Conſequences of the former Arreſt. The Queſtion was whether this was an Act of Bankruptcy or not. The Court thought this to be a Plain Act of Bankruptcy. The Intent to; defraud his Creditors would not have been ſufficient to make this Man a Bankrupt without doing the Act, *i. e.* keeping at Home, but he kept Houſe, and declared with what Intent; the Intent need not be put in Execution, the Queſtion is *Quo animo* he kept Houſe, he himſelf did the overt Act, and declared his Intent. *Davy* for Plaintiff; *Nares* for Defendant.

Sandford *againſt* Rogers, Eſq; Hil. 33 Geo. 2.

IN Caſe on Promiſe for Goods ſold and delivered, Defendant pleaded a Judgment recovered by Plaintiff, againſt Defendant for the ſame Cauſe of Action in the Court of *King's Bench*, and this he is ready to verify by the Record. Plaintiff replied *Nul tiel Record*, concluding with a general Averment thus, *viz.* And this he is ready to verify, *&c.* To this Replication Defendant demurred ſpecially, aſſigning for Cauſe, that a general Averment was bad, and that the Replication ſhould have concluded with giving Defendant a Day to bring in the Record. Plaintiff joined in Demurrer upon Argument. *Poole* for Defendant inſiſted, that as an Affirmative and Negative were contained in the Plea and Replication, the Iſſue was then complete, and a Rejoinder unneceſſary, *vide antea.*

Newberry *againſt* Strudwick. Eaſter 9 Geo. 2.

HEwitt for Plaintiff ſhewed ſeveral Precedents of Rejoinders where the Record pleaded is the Record of another Court, (not of the ſame Court where the Action is brought) in which Caſe a Rejoinder is the ſure Way to introduce an Affirmative on the Defendant's Part, and was the Practice in *B. R. tempore Holt* Chief Juſtice: The Court held either Way to be good with or without a Rejoinder. Judgment for the Plaintiff.

Dowding, Adminiſtrator, &c. *againſt* Baker & al. Trin. 13 & 14 Geo. 2.

THIS was an Action of Debt upon a Bond; Declaration delivered of *Trinity* Term laſt paſt, with an Imparlance 'till *Michaelmas* Term; Defendant procured a Judge's Order for Time to plead 'till the 15th *December*, and then pleaded *Solvit ad diem* by one of the Defendants. In *Hilary* Term Plaintiff replied, Nonpayment; and Defendant the ſame Term rejoined, entred a Waiver of his Plea, and ſet out Letters Teſtimonial dated 26th *November*, whereby it appeared, that Plaintiff was excommunicated on 23d *November*, and ſo pleads the Excommunication *puis* *darrein continuance* in *Eaſter* Term following. Plaintiff demurs, and Defendant joins in Demurrer. *Bootle* for Defendant alledged, that Plaintiff in making up the Demurrer Book, had continued the Imparlance 'till the laſt Return of *Michaelmas* Term, which is 25th *November*, though the Plea was delivered generally of that Term, and the Imparlance ought to be carried no farther than *Tres Mich.* By the Plaintiff's continuing it beyond 23d *November*, an Abſurdity was created, and the Excommunication appeared to be before, and not after the laſt Continuance. *Draper* for Plaintiff inſiſted, that it is Plaintiff's Right to enter Continuances by Imparlance, from the Declaration to Judgment or Iſſue. That Time to plead and an Imparlance are the ſame Thing, and as Defendant in Truth had Time to plead till the 15th *December*, the Imparlance ought to be continued according to the Fact; and of that Opinion were the Court, and ordered the Imparlance to ſtand continued till *Quinden' Martini*.

Shields and another *againſt* Cuthbertſon. Mich. 15 Geo. 2.

DEclaration for Goods ſold and delivered; Defendant pleads in Abatement, and traverſes the Inhabitancy; Plaintiff demurs, and on Argument made two Objections: 1ſt, That the Statute of Additions expreſſes the Word *Converſant*; that *Raſtall*, and all the old Entries, are ſo; indeed ſome modern Entries are *Commorant*, but none *Inhabitant*; and 2dly, That the Plea begins, that Defendant comes and defends the Wrong and Injury when, *&c.* and after a full Defence, Defendant cannot plead in Abatement. The ſecond Objection was over-ruled; but the firſt held good. A Man may lodge in one Pariſh, and work in another; he is *converſant* where he works. Judgment for Plaintiff that Defendant anſwer over. *Bootle* for Plaintiff; *Skinner* for Defendant.

Littlehales, an Attorney, *againſt* Boſanquett, by Attachment of Privilege. Eaſter 15 Geo. 2.

DEfendant demurred to the Declaration, and aſſigned for Cauſe the Want of Pledges. Plaintiff joined in Demurrer, and Defendant moved to withdraw his Demurrer on Payment of

Coſts, to pay 10 *l.* into Court upon the common Rule, and plead the General Iſſue; which was ordered, Plaintiff not oppoſing the ſame.

Note; It hath been determined, that Pledges need not be put into the Declaration. Pledges are upon the Writ, and may be found any Time before Judgment. *Manfield un' Cleric'* againſt *Richman*, on Demurrer, and Want of Pledges ſhewn for Cauſe, *Eaſter* 2 *Geo.* 2. *Durrant, one, &c.* againſt *Lynes, Trin.* 10 & 11 *Geo.* 2. *Bootle* for Defendant; *Skinner* for Plaintiff.

Sharpe *againſt* Sharpe. Mich. 16 Geo. 2.

AFTER Joinder in Demurrer, Plaintiff 27th *October* moved for a *Conſilium*, and afterwards delivered the Paper-Book the ſame Day, which was held to be irregular, and the Cauſe ordered to be ſtruck out of the Paper. The regular Practice is to tender the Paper-Book to Defendant's Attorney; if he refuſes to accept and pay for it, Judgment may be ſigned for want thereof; if he accepts and pays for it, then Plaintiff is proper to move for a *Conſilium*, and proceed to Argument. *Skinner* for Defendant; *Agar* for Plaintiff.

Wilſon, an Attorney, *againſt* Finch, an Attorney. Hilary 17 Geo. 2.

PLaintiff declared on a Promiſory Note; Defendant pleaded *Non Aſſumpſit infra ſex annos*. Plaintiff replied, an Attachment of Privilege, bearing Teſte five Terms before the Term of which the Declaration was delivered. Defendant demurred to the Replication, and Plaintiff joined in Demurrer. Upon the Argument, it was objected to the Replication, That no Return of the Attachment of Privilege, General or Special, appears; nor doth it appear that the Writ was delivered to the Sheriff, or returned; and that the Lapſe of five Terms was bad. The Court held, That an Appearance cures all Errors and Defects in Proceſs; and that the Words in the Declaration *(was attached by Writ of Privilege)* refer to the Return of that Writ, whenever it was; and gave Judgment for Plaintiff. *Draper* for Plaintiff; *Bootle* for Defendant.

Trinity 17 & 18 Geo. 2.

PER *Cur'*: For the Future, in all Demurrer-Books delivered to the Judges, let the Counſels Names be inſerted who ſigned the Pleadings; and let the Number-Roll and Day of Argument be ſet down on the Outſide of each Book.

Gott *againſt* Vavaſor and others, Heir and Deviſees, in Debt on Bond. Hilary 18 Geo. 2.

THE Action was brought on the Statute 3 & 4 *Will.* & *Mary, ch.* 14. *ſect.* 3 & 4. and on Demurrer the Court gave Judgment for Defendants; it appearing by the Pleadings that the Teſtator's Eſtate was deviſed to Truſtees for the Payment of Debts, and conſequently this was a Caſe out of the Statute.

Stone *againſt* Rawlinſon and another. Hilary 18 Geo. 2.

ACTION brought on Promiſory Note, payable to *A. B.* or Order, and indorſed to Plaintiff by the Adminiſtrator of *A. B.* Demurrer to the Declaration, and two Cauſes aſſigned: Firſt, That Plaintiff declared without a *Profert in Cur'* of the Letters of Adminiſtration of *A. B.* and ſecondly, That it did not appear by whom the ſame was granted. A third Objection was taken at the Bar, *viz.* That an Executor or Adminiſtrator cannot aſſign a Promiſory Note, ſo as to give an Indorſee an Action in his own Name. The firſt and ſecond Objections were over-ruled; becauſe the Letters of Adminiſtration cannot be ſuppoſed to be in the Cuſtody or Power of Plaintiff, but of the Adminiſtrator himſelf; and on Trial it would be incumbent on Plaintiff to ſhew the Perſon who indorſed the Note to him to be the proper Adminiſtrator of *A. B.*

The third Objection over-ruled, becauſe it has been the conſtant Practice among Merchants, for Executors and Adminiſtrators to indorſe both Promiſory Notes and Bills of Exchange; and the Court will endeavour to adapt the Rules of Law to the Courſe of Trade; and is warranted in this Opinion by the Words of the

Statute 3 & 4 *Ann. c.* 9. *ſect.* 1. which ſays, that Promiſory Notes are to be indorſed in like Manner as Bills of Exchange. The Equitable Intereſt is converted into a Legal Intereſt, and the whole Intereſt is veſted in the Adminiſtrator, who, before the Statute, might aſſign his Equitable, and ſince, his Legal Intereſt. *Moor* againſt *Manning*, *Mich.* 5 *Geo. in C. B.* held, That whoever has the abſolute Property, may aſſign a Note payable to Order. Judgment for Plaintiff. *Prime* for Plaintiff; *Birch* for Defendant.

Brumwell *againſt* Garnett, one, &c. Trin. 18 & 19 Geo. 2.

RULE for a *Conſilium*, made 24th *May*, in laſt *Eaſter* Term, though the Paper-Book was not then delivered, nor afterwards till the 20th of *June* inſtant, held irregular, and the Rule for a *Conſilium* diſcharged this Day, *viz.* *Wedneſday* 26th *June* 1745: But on Motion of Plaintiff's Counſel the ſame Day, the Court made a new Rule for a *Conſilium*, and gave Leave to ſet down the Cauſe for *Friday* next; diſpenſing with the Shortneſs of the Time for the Delivery of Books to the Judges. *Turner* againſt *Horton*, *Trin.* 10 & 11 *Geo.* 2. *Sharpe* againſt *Sharpe*, *Mich.* 16 *Geo.* 2. quoted. *Willes* for Defendant; *Draper* for Plaintiff.

Burgeſs *againſt* Halding. Trinity 19 & 20 Geo. 2.

ON the Argument of a Point reſerved at *Niſi prius*, the Court held, That in the Caſe of a Tender, the *Placita* is of no Validity. An Original muſt be produced. Judgment ordered to be entered for Defendant. *Willes* for Plaintiff; *Bootle* for Defendant.

Savile *againſt* Wiltſhire and another, Executors. Mich. 20 Geo. 2.

THIS Action was Debt on a Judgment obtained againſt the Teſtator, ſuggeſting the Judgment to have been recovered *Eſſex*, and the *Venue* was laid in *Eſſex*. Objected, That the

Venue muſt be in *Middleſex*, and no where elſe. Anſwered, The original Action wherein Judgment was recovered being laid in *Eſſex*; this Action may either be in *Eſſex* or in *Middleſex*, where the Record of the Judgment is; and cited *Hall* againſt *Wing field*, *Hob*. 95. where a Recognizance was taken at *Serjeants-Inn*, *London*, and recorded in *Middleſex*, the *Scire facias* may be either in *London* or *Middleſex*. *Per Cur'*: This Action is not founded partly in *Eſſex* and partly in *Middleſex*, being intirely on the Judgment. The original Action is at an End, *Tranſit in Rem judicatam*. The Court muſt take judicial Notice where the Common Pleas ſit, though not laid in the Declaration to be in *Middleſex*. Mr. Juſtice *Birch* quoted *Muſgrave* againſt *Wharton*, *Yelv*. 218. and *Cro. Jac*. 241. *Comyns*'s *Reports* 305. Declaration held bad on Demurrer, and Judgment for Defendant. *Draper* for Defendant; *Agar* for Plaintiff.

Furnis *againſt* Hallom. Eaſter 22 Geo. 2.

AWARD that Defendant ſhould pay Plaintiff, or Mr. *William Cock* his Attorney, ſuch Coſts as Plaintiff was liable to pay, of an Action in the Peverel Court, and Coſts of an Action at Common Law, between Plaintiff and Defendant and others, held to be uncertain, and not final. Coſts to be taxed by the proper Officer, has been held good. The Authority of Arbitrators may be delegated to a known Officer; or if Coſts are awarded generally, the ſworn Officer may aſcertain the *Quantum*. *Certum eſt quod certum reddi poteſt*. An Award may be good in Part and bad in Part; but the Objection here goes to the Juſtice of the Whole. Judgment on Demurrer for Defendant. *Bootle* for Defendant; *Poole* for Plaintiff.

Powell *againſt* Rowles and his Wife. Mich. 25 Geo. 2.

PLaintiff declared in *Middleſex*; Defendant pleaded in Abatement under the Statute of Additions, That he was a Pawnbroker, and not a Yeoman, as called in the Declaration. Plaintiff replies an Original Writ *in placito prædicto* in *Glouceſterſhire*, wherein Defendant is called a Pawn-broker; to which Replication Defendant demurs, and Plaintiff joins in Demurrer. On Argument the Court held, that Continuances of the Original Writ in this Caſe are not neceſſary; but that on an Original in *Glouceſterſhire*, Plaintiff cannot proceed in another County; nor have the Court any Juriſdiction in *Middleſex* under this Original in *Glouceſterſhire*. Defendant may be brought in after *Capias* returned *Non eſt inventus*, by a *Teſtatum* into any other County, but Plaintiff muſt come and proceed according to his Original Writ, and in the ſame County. Judgment *Quod Breve caſſetur*. *Draper* for Defendant; *Poole* for Plaintiff.

Wade, junior, *againſt* Wadman, Gent. one of the Attornies, Adminiſtrator, &c. Hilary 25 Geo. 2.

Defendant demurred generally to Plaintiff's Declaration; Plaintiff joined in Demurrer; and on Argument two Objections were made by Defendant's Counſel, firſt, That it was not alledged in the Declaration that Adminiſtration had been granted to Defendant; and ſecondly, That Defendant being ſued as Adminiſtrator, ought, in that Capacity, to have been proſecuted by Original Writ, and not by Bill, as at preſent. The Court overruled both Objections. As to the firſt they held, that calling Defendant Adminiſtrator of the Goods and Chattels of the Inteſtate, was ſufficient, without alledging that Adminiſtration had been granted to him. And as to the ſecond, (which is objected as Matter of Abatement, and not ſhewn for Cauſe of Demurrer) the Fault is cured by Defendant's Appearance; 'tis no Objection after Appearance. *Poole* for Defendant; *Agar* for Plaintiff.

Spencer and another, Executors, *againſt* Thomlinſon, one, &c. by Bill. Eaſter 25 Geo. 2.

Plaintiffs concluded their Declaration *(And thereof they bring Suit, &c.)* inſtead of *(pray Remedy, &c.)* Defendant demurred, and ſhewed ſaid Concluſion for Cauſe; Plaintiff joined in Demurrer. On Argument, the Court inclined to think either of theſe Ways of concluding good; but for the ſake of keeping up to the old conſtant Form of *prays Remedy, &c.* propoſed an Amendment, without Payment of Coſts; to which both Sides conſented; and a Rule was made accordingly. *Poole* for Defendant; *Draper* for Plaintiff.

Neſbett *againſt* Farmer. Mich. 27 Geo. 2.

DEfendant, after obtaining a Judge's Order for Time to rejoin, (rejoining iſſuably) demurred to Plaintiff's Replication. Plaintiff moved to ſet aſide the Demurrer, and obtained a Rule to ſhew Cauſe. Whereupon *Draper* for Defendant inſiſted, That as the Replication ſtood, Defendant could not with Safety rejoin iſſuably, but muſt demur, to bring the Merits of his Caſe in Queſtion. The Court held a Demurrer not to be an iſſuable Rejoinder within the Judge's Order; but that whether it was neceſſary or not, might appear. Plaintiff was ordered to join in Demurrer, and the Rule was enlarged till after the Argument. *Poole* for Plaintiff.

Deaf and Dumb Perſons.

Earl of Jerſey and another, *Demandants*, Barnes and another, *Tenants*; Lady Mary O'Bryen, *Vouchee*. Hil. 26 Geo. 2.

THE Vouchee being naturally Deaf and Dumb, Lord Chief Juſtice wrote down a Queſtion, as to her Conſent to ſuffer Recoveries of Eſtates in three different Counties, *Bucks*, *Oxon* and *Berks*. Mr. *Henry Barker* being ſworn, explained the Queſtion to her by Signs, which ſhe anſwered by Signs, and then he depoſed that ſhe underſtood the Queſtion, and was willing the Recoveries ſhould paſs; ſhe alſo under-wrote the Queſtion with theſe Words, (viz.) *Yes, I do know and conſent*; and ſigned her Name *Mary O'Bryen*; whereupon the Recoveries were paſſed at Bar. *Vide Griffin* againſt *Ferrers*, *Eaſter* 6 *Geo.* 1. Sir *G. Gooke*'s Caſes. Several ſimilar have happened, particularly one, as to Service of a Deaf and Dumb Woman, Tenant in Poſſeſſion of Premiſſes, with a Declaration in Ejectment, by ſignifying to her the Meaning and Contents of ſuch Declaration, and the Notice ſubſcribed, by Means of a Perſon who explained the ſame to her by ſignificant Signs, which ſhe underſtood, as the Perſon explaining made Affidavit; and thereupon the Court made the uſual Rule for Judgment, unleſs the Tenant, *&c.* appeared. *Goodtitle, on the Demiſe of Weſſell, Eſquire,* againſt *Badtitle,* in Ejectment, *Suſannah Grey,* Tenant. *Hil.* 22 *Geo.* 2. *Willes* for Demandants.

Diſcontinuance.

Hale, Adminiſtrator, *againſt* Norton. Mich. 6 Geo. 2.

PER *Cur'*: Plaintiff though an Adminiſtrator cannot diſcontinue without Payment of Coſts.

Pym *againſt* Warren.

PLaintiff moved to diſcontinue upon Payment of Coſts after Judgment given on Demurrer for the Plaintiff (but not entered upon Record) and a Writ of Error brought, and Bail put in thereupon. The Court refuſed to make a Rule to diſcontinue without Payment of Coſts on the Writ of Error.

Heber, an Attorney, *againſt* Biſhop. Mich. 7 Geo. 2.

PLaintiff obtained a Rule to diſcontinue on Payment of Coſts. Defendant moved to diſcharge the Rule upon an Affidavit that he had been a ſecond Time arreſted for the ſame Cauſe of Action before the Rule to diſcontinue was obtained. The Court refuſed to make any Rule. Plaintiff may diſcontinue at any Time. *Wright* for Defendant.

Mellor *againſt* Hutchinſon.

THIS was in Replevin; the Avowant had juſtified under a Diſtreſs for Rent. Plaintiff demurred to the Avowry, and upon arguing the Demurrer, Court gave Judgment for the

Avowant. *Eyre* afterwards moved for Plaintiff to diſcontinue; but Court denied the Motion. The Queſtion determined upon Demurrer being upon the Conſtruction of the Act of Parliament, which is the Merits of the Cauſe. *Skinner* for Defendant.

Vanfleet *againſt* Croſs. Hil. 7 Geo. 2.

PLaintiff had obtained a Rule to diſcontinue (which was drawn up in the following Manner, *(viz.)* that Plaintiff *ſhall* diſcontinue, and *ſhall* pay Coſts, *&c.*) Upon an Affidavit that Defendant being indebted to Plaintiff, a Writ was iſſued againſt him; but Defendant having paid the Money before the Arreſt, the Sheriff's Officer to whom the Warrant was delivered was countermanded from proceeding, notwithſtanding which he arreſted Defendant, who thereupon brought an Action for falſe Impriſonment in the Court of *King's Bench*. The Coſts upon the Rule had been paid, but the Diſcontinuance was not entered upon Record. The Court thought the Rule not drawn up in common Form, which is, that the Plaintiff *have Leave* or *be at Liberty* to diſcontinue; and therefore diſcharged the Rule. The Action brought in the *King's Bench* appeared to be vexatious, and Plaintiff, by diſcharging his Rule to diſcontinue, had an Opportunity of pleading the Action in this Court ſtill depending, or juſtifying under the *Capias*, as he ſhould be adviſed.

Hook, Adminiſtrator, *againſt* Hayward. Eaſter 13 Geo. 2.

A *Sci. Fa.* was ſued out by Plaintiff to revive a Judgment recovered by Plaintiff's Inteſtate. Defendant craved Oyer of the Letters of Adminiſtration, which being defective, Plaintiff drop'd the Proceeding on *Sci. Fa.* and having procured ſufficient Letters of Adminiſtration, brought an Action of Debt on the Judgment in the Court of *King's Bench*. Defendant pleaded the Writ of *Sci. Fa.* pending in this Court in Abatement, and Paintiff replied a Diſcontinuance (entred without Leave of the Court). Defendant moved to ſet aſide the Diſcontinuance, and the Queſtion was, Whether or no Plaintiff could diſcontinue without Leave of the Court? The Practice was variouſly reported, and it not appearing whether the Roll whereupon the Diſcontinuance was entred was brought in before or after the Plea in the *King's Bench*, the Rule to ſhew Cauſe why the Diſcontinuance ſhould not be ſet aſide was diſcharged; Plaintiff conſenting to pay Coſts of the Plea in Abatement, and that Defendant ſhould be at Liberty to plead *de novo*. *Brime* for Plaintiff; *Agar* for Defendant.

Wignall *againſt* Bouch, in Replevin. Mich. 17 Geo. 2.

AFTER Joinder in Demurrer, Plaintiff obtained a Rule for the Avowant to ſhew Cauſe why he ſhould not diſcontinue, on Payment of Coſts. It was objected for the Aowant, that a Diſcontinuance in Replevin is very different from a *Nonpros*; and that after a Diſcontinuance, a Writ of *Retorn' Habend'* could not be awarded. The Court did not enter into the Conſideration of that Matter, becauſe the Parties entered into a Rule by Conſent to ſtay Proceedings on Payment of the Rent in Arrear, with Coſts. *Wynne* for Plaintiff; *Draper* for Avowant.

Ejectments.

Kirwood *againſt* Backhouſe. Mich. 6 Geo. 2.

In Ejectment. THE Wife of the Tenant in Poſſeſſion on a Perſon's knocking at the Door of the Houſe in order to ſerve the Declaration, opened a Wicket in the Door and looked through it, and was then acquainted with the Contents of the Declaration, and the *Engliſh* Subſcription was read to her, and immediately after, and before the Declaration could be tendered to her, ſhe ſhut the Wicket: Whereupon the Declaration was fixed upon the Door (as by Affidavit appeared); and it was ſworn that the Tenant in Poſſeſſion afterwards acknowledged the Receipt of the Declaration on the Day it was tendered to his Wife and fixed upon the Door. The Service was held inſufficient, becauſe the Tenant's Acknowledgment that he received the Declaration is not enough; an actual Delivery, or Tender and Refuſal, ought either to be proved or confeſſed.

Negative *againſt* Poſitive.

Ex dim' Parſons. PER *Cur'*: An Ejectment on a vacant Poſſeſſion in *London* or *Middleſex* on the new Act of Parliament may be moved at any Time in Term, and is not within the old Rule concerning Motions in Ejectment. *Trin.* 32 *Car.* 2. which relates only to Declarations in Ejectment ſerved upon Tenants in Poſſeſſion.

Balderidge *againſt* Paterſon. Trin. 6 & 7 Geo. 2.

Ex dim' Hudſpeth. WYNNE moved that the Landlords, *viz. Roger Preſton*, *Jane Preſton* Widow, and *James Goodwill*, might be made Defendants without the Tenant in Poſſeſſion, who refuſed to appear. Denied *per Cur'*; but the common Rule was made to add the Landlords to the Tenants in Poſſeſſion.

Peaceable *againſt* Troubleſome. Mich. 7 Geo. 2.

In Ejectment. THE *Engliſh* Notice at the Foot of the Declaration was ſubſcribed by the nominal Plaintiff inſtead of the caſual Ejector, which the Court held bad, and diſcharged the Rule for Judgment. Same Caſe in *B. R. Hil.* 2 *G.* 2. *Barker* againſt *Merefield*. *Baynes* for Plaintiff; *Hawkins* for Defendant.

Roe, on the Demiſe of Bird, *againſt* Doe.

In Ejectment. THE Declaration in this Cauſe was delivered to Tenant in Poſſeſſion after the Eſſoin-Day, to wit, *October* 26. within Term, and upon Affidavit of ſuch Service *Chapple* moved for Judgment, alledging that the Declaration being delivered before *Craſ' Animar'* was well delivered, ſo as to intitle the Plaintiff to his Judgment this Term. *Skinner* for the Tenant oppoſed the Motion, and inſiſted, that all Declarations in Ejectment muſt be delivered before the Eſſoin-Day, otherwiſe Plaintiff cannot have Judgment till the ſubſequent Term; and ſo the Court held, Declaration in Ejectment being the firſt Proceſs; in other Caſes a Writ precedes the Declaration.

Smalley *againſt* Neale. Hil. 7 Geo. 2.

In Ejectment. THE Tenant, who was an unmarried Man, abſconded, and left a Servant in his Houſe, to recover the Poſſeſſion whereof this Ejectment was brought. *Chapple* moved for Judgment upon an Affidavit, that a Copy of the Declaration was ſerved upon the Servant, and another Copy was affixed on the Street-Door, which the Court held to be ſufficient Service within the late Act of Parliament, and made a Rule accordingly.

Birkbeck *againſt* Hughes.

SKINNER moved for Judgment againſt the Caſual Ejector. The Affidavit ſet out, that Deponent did ſerve *A. B.* Tenant in Poſſeſſion, or *C.* his Wife. *Per Cur':* It is not certain as to either. No Rule.

Right *againſt* Wrong. Eaſter 7 Geo. 2.

In Ejectment ex dim' Streak. *WYNNE* moved, that the Tenant in Poſſeſſion might ſhew Cauſe, why he ſhould not appear and defend the Title, his Landlord having tendered him an Indempnity. Court refuſed to make that Rule, but enlarged the Time to appear.

Makepeace *againſt* Hopwood.

In Ejectment. *SKINNER* moved in Arreſt of Judgment, the Words in the Declaration being *one Meſſuage or Tenement*, which is too uncertain; Tenement is all a Man holds, and after Judgment the Sheriff cannot tell of what to deliver Poſſeſſion. The common Rule was made to ſtay Judgment till Cauſe ſhewn, and afterwards upon hearing *Darnal* for Plaintiff, the Judgment was arreſted.

Halſal *againſt* Wedgwood.

In Ejectment ex dim' Lord Leigh. HAWKINS moved for Judgment upon an Affidavit that *Wightman* the Tenant in Poſſeſſion refuſed to accept the Declaration when tendered to him: That he was acquainted with the Contents; that he brought a Gun, and ſwore he would ſhoot the Perſon who tendered the Declaration, if he did not get off his Land: Whereupon the Declaration was laid down on the Ground in the Preſence of *Wightman* and his Man, whom *Wightman* ordered not to take it up. The Court were of Opinion that theſe Circumſtances amounted to good Service, and made a Rule for Judgment. *Per Cur'*: It is the ſame Thing as a continual Claim, where the Party comes as near the Land as he can to make his Claim for fear of his Life. The Caſe of *Kirwood* and *Backhouſe* in *Mich.* 6. is not like this Caſe. There the Declaration was never tendered; here Tender and Refuſal are proved.

Ellis *againſt* Knowles, on the Demiſe of Lord Falconbridge.

In Ejectment. DARNAL moved for Judgment againſt the Caſual Ejector, as to ſome of the Defendants who were acquitted at the Trial by reaſon of their not confeſſing Leaſe, Entry and Ouſter, as appeared by an Indorſement on the *Poſtea* (Plaintiff obtained a Verdict againſt the other Defendants who did confeſs;) he quoted 13 *Gul.* 3. *per Holt* in the Home-Circuit, and mentioned a *Devonſhire* Cauſe in the *King's Bench*, but not the Parties Names nor the Term. Court made a Rule to ſhew Cauſe, which was afterwards made abſolute.

Harding *againſt* Greenſmith, on the Demiſe of Baker.

Trin. 7 & 8 Geo. 2.

In Ejectment. THE Affidavit of Service of Declaration was as follows, *viz.* That Deponent did ſerve the

Wives of *A.* and *B.* who, or one of them, are Tenants in Poſſeſſion, *&c.* The Court refuſed to make a Rule for Judgment. The Affidavit is defective.

Thredder *againſt* Travis. Mich. 8 Geo. 2.

In Ejectment, Poſſeſſion vacant. CHAPPLE moved for Judgment in *London*, where the Notice to appear was not on the firſt Day, but in the Beginning of *Michaelmas* Term. The Court made a Rule for Judgment, unleſs ſome Perſon claiming Title appeared within four Days.

Jones, upon Demiſe of Thomas, *againſt* Hengeſt.

In Ejectment. RULE was made to ſhew Cauſe why a *Non-pros* for not confeſſing Leaſe, Entry, and Ouſter ſhould not be ſet aſide, there being a material Variance between the Iſſue and the Record, Defendant therefore did not confeſs. *Per Cur'*: Confeſſion would not have been a Defence, Defendant might have afterwards moved to ſet aſide the Verdict for the Variance, the *Non-pros* is regular; but let it be ſet aſide upon Payment of Coſts. *Chapple* for Leſſor of Plaintiff; *Eyre* for Defendant. *Gulliver* againſt *Appleyard*, *Mich.* 4 *Geo.* 2. quoted.

Scrape *againſt* Hunt. Hil. 8 Geo. 2.

In Ejectment. THE Declaration was delivered to the Daughter of Tenant in Poſſeſſion, and ſhe was acquainted with the Contents; the Tenant afterwards acknowledged the Receipt of it. Held ſufficient Service.

Goodright, on the Demiſe of the Duke of Montague, *againſt* Wrong.

GLYDE moved, That Mr. *Pigot*, who claimed Title, might be made Defendant inſtead of the late Tenant, who had quitted the Poſſeſſion. Denied.

Roe *againſt* Doe.

Ex dim' Jefferyes *and others in Ejectment.* THE Declaration was left with the Father of the Tenant in Poſſeſſion with the uſual Subſcription, and he was acquainted with the Contents; after which and before the Eſſoin-Day the Tenant acknowledged the Receipt of it. Held ſufficient Service. *Belfield.*

Goodright *againſt* Moore. Eaſt. 8 Geo. 2.

Ex dim' Tonkyn. MOTION to ſtay Proceedings on Payment of Mortgage-Money and Coſts, purſuant to Statute 7 *Geo.* 2. *Belfield* for Plaintiff ſhewed Cauſe, and produced an Affidavit that the Mortgagee had been at great Expence in neceſſary Repairs of Part of the Tenements in his Poſſeſſion, (the Ejectmeht was brought for the Reſidue) and therefore prayed that the Prothonotary might be directed to make Allowance for ſuch Repairs. *Per Cur' :* The Rule muſt follow the Words of the Statute. The Prothonotary will make juſt Deductions and Allowances.

Grimſtone *againſt* Burgers and others, on the Demiſe of Lord Gower and others.

MOTION to conſolidate ſixteen Ejectments in one after ſixteen ſeveral Iſſues joined in *Hilary* Term laſt. It was urged for Plaintiff, that Iſſues were delivered and paid for ſo long ago as *Mar.* 12. laſt, but the Court held that it was neceſſary for Defendants to pay for the Iſſues, to prevent Judgment, and ordered the Ejectments to be conſolidated.

N. B. Each Declaration contained a large Number of Meſſuages, and they were Word for Word the ſame. Had each been for one Meſſuage only, the Plaintiff might have tried them ſeparately. *Skinner* and *Eyre* for Defendant; *Wright* for Plaintiff.

Ex parte Beauchamp *and* Burt. Trin. 10 Geo. 2.

CHAPPLE moved, that theſe Perſons who claimed Title to ſome Lands and Tenements *in Com' Midd'* (the Poſſeſſion whereof was vacant) might be informed by Mr. *Baniſter* (Attorney for a Perſon who was carrying on a Proceeding in Ejectment in the old Way, under a Leaſe ſealed upon the Premiſſes) of the Names of the Parties in that Ejectment, in order that *Beauchamp* and *Burt* might appear and defend the Title. It was urged by *Eyre* for *Baniſter*, that in all Caſes of vacant Poſſeſſion, unleſs ſuch as are within the late Act of Parliament concerning Landlords and Tenants by Leaſe, with a Clauſe of Re-entry, no Inſtance can be ſhewn where any Perſon claiming Title hath been let in to defend, but he that can firſt ſeal a Leaſe upon the Premiſſes, muſt obtain Poſſeſſion, and any other Perſon claiming Title may eject him if he can; and by the Courſe of the Court no Defence can be made in theſe Caſes but by the Defendant in the Ejectment, who is a real Ejector. The Court took Time to conſider of this Matter, but never made any Rule. The Practice hath conſtantly been as ſtated by *Eyre*. *Chapple* produced two old Rules of Court concerning Ejectments, *Trin.* 22 *Car.* 2. and *Hil.* 1659. and cited *Stiles*'s Reports 368.

Felton *againſt* Aſh.

MR. Juſtice *Forteſcue* had made an Order purſuant to the late Act of Parliament to ſtay Mortgagees Proceeding in Ejectment upon bringing Principal, Intereſt and Coſts into Court, and a Rule was made to make the Order a Rule of Court *niſi cauſa*; but it afterwards appearing to the Court that Notice had been given by the Mortgagee to the Mortgagor that he inſiſted upon Payment of two Bonds, which were a Lien upon the Eſtate, the Caſe was adjudged to be out of the Act of Parliament, and the Rule *Niſi* was diſcharged.

Roe *againſt* Doe, on the Demiſe of Fitzherbert.

SKINNER had obtained a Rule for the Infant Leſſor of the Plaintiff to ſhew Cauſe why he ſhould not give Security for see H. Blackst. R. 196.

Payment of Coſts in Caſe he failed in the Suit, which was diſcharged on hearing. *Hawkins* for the Plaintiff.

Doe *againſt* Roe, on the Demiſe of Dry.

In Ejectment. URLIN moved for Judgment againſt the Caſual Ejector, upon an Affidavit that the Declaration was tendered to the Wife of the Tenant in Poſſeſſion, who refuſed to open the Door of the Houſe, but looked out at a Parlour Window, and was acquainted with the Contents, and the Subſcription was read to her; after which, ſhe refuſing to accept the Declaration, it was put in at the Window to her. The Service was held ſufficient.

Roe, on Demiſe of Jones, *againſt* Doe. Eaſter 11 Geo. 2.

In Ejectment. SPARK, an Attorney, entered into the common Rule by Conſent, and left it in the Prothonotary's Office; after which Judgment was ſigned againſt the Caſual Ejector. A Rule was made to ſhew Cauſe why the Judgment ſhould not be ſet aſide; but no Appearance being entered with the Filazer for the Tenants in Poſſeſſion, and the common Rule not being marked by the Filazer, as it ought to have been before left in the Prothonotary's Office; and *Spark* having entered into the common Rule for *Page*, one of the Tenants, without his Conſent; the Rule to ſhew Cauſe was diſcharged with Coſts. *Eyre* and *Prime* for Tenants; *Skinner* for Plaintiff.

Goodright, on the Demiſe of Ruſſell, *againſt* Noright. Trin. 11 & 12 Geo. 2.

In Ejectment. THE judgment irregularly obtained was ſet aſide, and Poſſeſſion ordered to be reſtored; but the Leſſor of the Plaintiff (who held the Poſſeſſion) abſconding, the Rule was ineffectual. *Eyre* moved, on Behalf of the late Tenants in Poſſeſſion, for a Writ of Reſtitution, which was ordered.

Hobſon, on the Demiſe of Bigland, *againſt* Dobſon.

Mich. 12 Geo. 2.

In Ejectment. *WYNNE* moved for the Landlord to defend, upon Statute 11 *Geo.* 2. The Court objected that this Motion could not properly be made 'till after Judgment ſigned againſt the Caſual Ejector; and that Affidavit ought to be produced of the Tenant's Refuſal or Neglect to appear. *Wynne* anſwered, That immediately after Judgment ſigned againſt the Caſual Ejector, Plaintiff might take Poſſeſſion. The Court held the Affidavit neceſſary, and therefore made no Rule; but declared that the Intent of ſigning Judgment againſt the Caſual Ejector, was only that the Plaintiff, after having tried his Cauſe againſt the Landlord, (the Tenant not being a Party) might have the Benefit of his Verdict, and take Poſſeſſion under the Judgment, which under ſuch Verdict he could not. It ſeems reaſonable (upon a proper Affidavit) to grant a Rule to ſhew Cauſe, before Judgment againſt the Caſual Ejector can be ſigned, to prevent the ill Conſequence of taking Poſſeſſion immediately after.

Roe, on Demiſe of Gohard, *againſt* Doe.

EYRE moved upon Statute 11 *Geo.* 2. that the Landlord might be added Defendant to *C. D.* one of his Tenants, who did appear to defend for the Tenements in his Poſſeſſion; and that as to the Reſidue of the Tenements in Poſſeſſion of *T. M.* another Tenant, who refuſed to appear (as *per* Affidavit) the Landlord might appear and defend ſingly, and a Rule was made accordingly; and that Plaintiff might ſign Judgment againſt the Caſual Ejector, as to the Tenements in Poſſeſſion of *T. M.* but that the Writ of *Habere facias poſſeſſionem* be ſtayed 'till farther Order.

Plumb *againſt* Savage and his Wife, on Demiſe of Byam. Trin. 13 Geo. 2.

In Ejectment. RULE for Leſſor of Plaintiff, and Mr. *Peacock* his Attorney, why not an Attachment for prevailing upon Tenant in Poſſeſſion, by undue Practices, to deliver Poſſeſſion of the Premiſſes (which Defendants claimed as Tenant's Landlords) pending the Suit; and after Rule obtained by Defendants to be at Liberty to defend their Title, purſuant to the late Act of Parliament (the Tenant refuſing to appear) and entring into the common Conſent Rule; Rule diſcharged, it being no Contempt of the Court, but a Fraud, which ought to be prevented, and is not remedied by the late Act. Ejectment is a Fiction, and in the Breaſt of the Court. Tenants ſhould be bound not to change the Poſſeſſion. *Skinner* and *Prime* for Plaintiff's Leſſor and *Peacock*; *Agar* for Defendants.

Benn *againſt* Denn, on the Demiſe of Mortimer and his Wife.

In Ejectment. A Former Ejectment had been brought on the Demiſe of the ſame Leſſors, wherein Defendants had a Verdict, and obtained an Attachment againſt *Robert Mortimer*, one of the Leſſors, for Non-payment of Coſts; whereupon he was arreſted and detained in Cuſtody. And now *Bootle* moved for Defendant to ſtay Proceedings in this Ejectment 'till the Coſts of the former were paid: But *per Cur'*, The Leſſor of the Plaintiff being in Cuſtody upon ſaid Attachment for Coſts, which is in the Nature of a *Ca. Sa.* there is no Reaſon to grant the Rule.

Farmer *againſt* Thruſtout, on the Demiſe of Miles.

In Ejectment. THE Declaration was tendered to the Wife of the Tenant in Poſſeſſion upon the Premiſſes. She was acquainted with the Contents thereof, and of the Subſcription, through a Window, which ſhe refuſed to open, or receive the Declaration; and thereupon the Declaration was left upon the out-ſide Ledge of the Window. The Perſon who tendered the Declaration ſwore, that he heard the Woman's Voice diſtinctly through the Window; and was well aſſured ſhe heard what he ſaid by the Anſwers ſhe gave him. The Service was held ſufficient, and the common Rule for Judgment was made. *Prime* for Plaintiff.

Fenn *againſt* Denn.

In Ejectment for Lands in Denbighſhire, Wales. BIRCH moved for Judgment. A Rule made. But see Godb. 214. & p. 421. & Lord Camden's Argumt. in my Law Tracts 422.

Tupper *againſt* Doe, on the Demiſe of Mercer *and* Woollett.

In Ejectment. A Declaration in Ejectment ſerved on the Church-wardens and Overſeers of a Pariſh, who rented a Houſe for harbouring ſome of the Pariſh Poor, and did not otherwiſe occupy the Houſe than by placing the Poor in it. Deemed ſufficient Service, and a Rule made for Judgment. *Agar* for Plaintiff.

Roe *againſt* Doe, on the Demiſe of Humphreys.

In Ejectment. THE Tenant in Poſſeſſion not appearing at the Trial to confeſs Leaſe, Entry and Ouſter, Judgment was entred againſt the Caſual Ejector. *Adney* an Attorney brought a Writ of Error in the Name of the Caſual Ejector, which he was ordered to *nonpros* at his own Expence, and pay Coſts, but was excuſed from farther Cenſure, it appearing that he had been informed by ſome of the Curſitors Clerks, that ſuch a Writ of Error might be brought. *Wynne* for the Leſſor of the Plaintiff. *Urlin* for *Adney*.

Goodright, on the Demiſe of Rowell, *againſt* Vice, in Ejectment. Trin. 13 & 14 Geo. 2.

DEfendant at the Trial not appearing to confeſs Leaſe, Entry and Ouſter, a Nonſuit happened, and afterwards Plaintiff's Leſſor, inſtead of taking his Remedy for Coſts taxed upon the common Rule, as he ought to have done, entered Judgment againſt the Caſual Ejector, ſued out a *Fi. fa.* againſt Defendant's Goods, and levied his Coſts thereon, acting as ſpecial Bailiff himſelf. An Action was brought by Defendant in the *King's Bench* for this irregular Levy, againſt Plaintiff's Leſſor and *Kimber* his Attorney; and after Special Pleadings therein, Defendant moved here to ſet aſide the *Fi. fa.* and Court ordered Reſtitution to be made, and Defendant's Coſts to be paid by Plaintiff's Leſſor and *Kimber*. And by Conſent, the Action in the *King's Bench* to be diſcontinued, without Coſts, and no other Action to be brought. *Wynne* for Defendant; *Huſſey* and *Draper* for Plaintiff.

Bingham, on the Demiſe of Lane and others, *againſt* Gregg, in Ejectment. Trinity 14 & 15 Geo. 2.

RULE on the Statute 7th *Geo.* 2. to ſhew Cauſe why Proceedings ſhould not be ſtayed, on Payment of the Mortgage-Money and Coſts, was made abſolute; Leſſors of the Plaintiff, Aſſignees of the Mortgagee, inſiſted to be paid a Bond and a Simple Contract Debt due to themſelves in their own Right. *Per Cur':* A Bond is no Lien in Equity, unleſs where the Heir comes to redeem. *Prime* for Plaintiff; *Bootle* for Defendant.

Stiles, on the Demiſe of Redhead, *againſt* Oakes, in Ejectment. Eaſt. 15 Geo. 2.

DEfendant, the Landlord, admitted to defend by ſpecial Rule, did not appear at the Trial to confeſs Leaſe, Entry and Ouſter, whereby Plaintiff was nonſuited. Plaintiff produced the *Poſtea*, and moved for Leave to take out Execution againſt the

Caſual Ejector, upon the Judgment ſigned by virtue of the ſpecial Rule to defend, which was granted abſolutely. *Agar* for Plaintiff.

Goodtitle *againſt* Thruſtout, in Ejectment, on the Demiſe of Maſſa. Trinity 16 Geo. 2.

JOHN *Cryſtall*, Tenant in Poſſeſſion, upon a *Sunday* acknowledged the Receipt of the Declaration, which before the Eſſoign Day had been delivered to his Daughter, and ſhe acquainted with the Contents. This was held ſufficient Service, and the Common Rule was made for Judgment *Niſi*, *&c.* *Willes* for Plaintiff.

Thruſtout, on the Demiſe of Dunham an Infant, *againſt* Percivall and others, in Ejectment.

PRIME, for Defendant, moved and obtained a Rule to ſhew Cauſe why Proceedings ſhould not be ſtayed till a good Plaintiff be named, or Security, to be approved by the Prothonotary, be given by the Infant Leſſor, for ſecuring Coſts to Defendant, in Caſe of a Nonſuit or Verdict for Defendant. *Draper* for the Leſſor urged, that though in the *King's Bench* ſuch Rules have been made, yet the Practice here is otherwiſe, becauſe the Infant is liable to an Attachment for Non-payment of Coſts. He quoted *Throgmorton* againſt *Smith*, *Eaſter* 5 *Geo.* 2. in *B. R.* *Robinſon*, *on the Demiſe of Meager*, againſt *Burton*, *Mich.* 3 *Geo.* 2. in *C. B.* where Attachments for Non-payment of Coſts were granted againſt Infants of very tender Age; and obſerved, that the Infant who is enabled to make a Leaſe in Ejectment, muſt take it with all its Inconveniencies. *Per Cur'.* In all other Suits, an Infant under Years of Diſcretion, cannot be guilty of a Contempt. *Non diuturnitas temporis ſed ſoliditas rationis eſt conſideranda.* Rule abſolute.

Duckworth,

Duckworth, on the Demiſe of Tubley and others, *againſt* Tunſtall, in Ejectment. Mich. 16 Geo. 2.

LEſſors of the Plaintiff were both Deviſees and Executors, and in each Capacity Rent was due to them. Defendant moved to ſtay Proceedings, upon Payment of the Rent due to Leſſors of Plaintiff as Deviſees, they not being intitled to bring an Ejectment as Executors. There appeared to be a mutual Debt due to Defendant by ſimple Contract, and Defendant offered to go into the whole Account, taking in both Demands as Deviſees and Executors, having juſt Allowances; which Leſſors of Plaintiff refuſed. The Rule was made abſolute to ſtay Proceedings, on Payment of the Rent due to Leſſors as Deviſees, and Coſts. *Prime* and *Bootle* for Defendant; *Wynne* for Plaintiff.

Goodright on the Demiſe of Griffin, *againſt* Fawſon, in Ejectment.

THIS Ejectment was brought for one Meſſuage, with the Appurtenances, in the Pariſhes of *St. John the Baptiſt* and *St. Michael*, in the City of *Coventry* and County of the ſame City, or one of them; and after a Verdict for Plaintiff, the Judgment was arreſted. The Plaintiff's Excuſe for deſcribing the Pariſh where the Meſſuage ſtood, as above, was, That by a late Act of Parliament the firſt Pariſh was to be divided into two, and the Diviſion was not yet ſettled. The Court held the Deſcription to be totally uncertain; and that one of the Pariſhes cannot be rejected as Surpluſage. In Real Actions, and where the Poſſeſſion of Lands is to be recovered, Certainty is always required. In this Caſe, Defendant could not know what to defend for, nor the Sheriff of what to give Poſſeſſion. *Willes* for Defendant; *Draper* for Plaintiff.

Doe, on the Demiſe of Henant, alias Henden, *againſt* Thomas and others, in Ejectment. Hilary 16 Geo. 2.

WIthin the firſt four Days of the Term *Birch* moved for Leave to plead Ancient Demeſne, upon an Affidavit that the Premiſſes in Queſtion were reputed to be Lands in Ancient Demeſne; and a Rule was made to ſhew Cauſe, and afterwards abſolute upon hearing Counſel on both Sides. The Affidavit is ſufficient to ſhew a probable Cauſe to plead this Plea; and any other Plea to the Juriſdiction of the Court may be pleaded in Time, without Motion. *Skinner* for Plaintiff.

Bagſhaw, on the Demiſe of Aſhton *againſt* Toogood.

KETELBEY moved, upon an Affidavit of tendring the Declaration to *Jane Reynolds*, Widow, Tenant in Poſſeſſion, which ſhe refuſing to accept, it was left on the Floor, in her Preſence; and ſhe retiring into a Parlour and ſhutting the Door, the Perſon ſerving read the Subſcription aloud, ſo as ſhe might hear it; which was held ſufficient Service; and the Common Rule for Judgment was made.

Fenn, on the Demiſe of Rickattſon, *againſt* Marriot, Eſquire, and his Wife, in Ejectment. Mich. 17 Geo. 2.

FOR the Future, let Rules for Leave to take out Execution by the Plaintiff againſt the Caſual Ejector, after Verdict againſt the Landlord made Defendant inſtead of the Tenant in Poſſeſſion, purſuant to the late Statute, be abſolute, and not to ſhew Cauſe. *Eyre* for Plaintiff.

Roe *againſt* Doe, on the Demiſe of Stephenſon, in Ejectment, in Middleſex.

PRIME moved for Judgment, upon an Affidavit of Service of a Declaration intituled *Trinity* Term 17th, inſtead of 16th & 17th *Geo.* 2. and prayed a Rule for Judgment, unleſs the Tenants appeared within four Days after Notice. He quoted *York, on the Demiſe of Chambers*, againſt *Ferris*, where the Declaration was intituled *Trinity* 4th, inſtead of 3d & 4th *Geo.* 2. in *Cornwall*, moved in *Michaelmas* Term 4th; and ſuch a Rule was made: But upon Affidavit of Service thereof, the Court, by a ſecond Rule, inlarged the Time for appearing, till four Days after the next iſſuable Term [*Hilary*], as uſual in Country Cauſes. *Per Cur'*: The Declaration in Ejectment is the firſt Proceſs; and there is nothing precedes whereby it can be amended. This ſingle Precedent, without Oppoſition, is not of Weight ſufficient to overturn the general Practice; and the firſt Rule does not ſeem to have been well conſidered. A new Declaration might have been delivered before the Eſſoin Day of *Hilary* Term, and Plaintiff would have been as forward thereby as by his former Declaration; and in Country Cauſes, where Declarations are of *Trinity*, the Notice may be good to appear in next *Hilary*, (paſſing over *Michaelmas)* though not the uſual Practice. No Declaration in Ejectment in the *King's Bench*, or here, can be amended before Appearance; and afterwards in Form only, but not in the Demiſe, or other Matter of Subſtance. The Court can make no Rule in this Caſe.

Roe *againſt* Doe, on the Demiſe of Hyde, in Ejectment. Eaſter 18 Geo. 2.

THE Tenants had the Forenoon of the 29th *April* this Term to appear in; *Foſter*, the Landlord, moved to add himſelf to the Tenants, but no Appearance being entered, Plaintiff on the 30th ſigned Judgment againſt the Caſual Ejector. The Landlord afterwards, without diſcloſing to the Court what had been previouſly done, applied for the Conditional Rule, as a Matter of Courſe, and by Virtue thereof on the 1ſt *May* appeared alone, without the Tenants. *Prime*, for Plaintiff, moved for

Leave to take out Execution on the Judgment; and on ſhewing Cauſe, the Judgment appeared to be regular, and the Appearance out of Time. Plaintiff offered to waive his Judgment, if the Landlord, who reſided at *Jamaica*, would give Security for Coſts; to which his Counſel not conſenting, the Court made the Rule abſolute, for Leave to take out Execution. *Skinner* and *Draper* for the Landlord.

Goodtitle, on the Demiſe of Symons, Eſq; *againſt* Thruſtout, in Ejectment, Clarke, Eſq; Landlord. Trin. 19 & 20 Geo. 2.

THE Declaration was of *Hilary* Term, ſerved with Notice to appear in *Eaſter* Term laſt, and not moved till this Term, when a Rule was made for Judgment, unleſs the Tenant ſhould appear within ſix Days after Notice. The Landlord prayed for the Conditional Rule, and for Leave to plead Ancient Demeſne, upon an Affidavit that the Premiſes were Ancient Demeſne; and obtained a Rule to ſhew Cauſe. *Per Curiam:* The Landlord, by the late Statute, is to enter into the Common Rule by Conſent; before that Statute, he might have been added a Defendant; and if he had applied in Time, muſt have had Leave to plead Ancient Demeſne. He is to be conſidered in all Reſpects in the ſame Caſe as the Tenant in Poſſeſſion, but muſt apply according to the Courſe and Rules of the Court. If the Plaintiff ſhould prevail on this Plea to the Juriſdiction of the Court, the Judgment muſt be, that Defendant ſhall anſwer over. Therefore, if this Plea be not confined to a Time certain, great Delay of Juſtice muſt follow. The Rule diſcharged, as to pleading Ancient Demeſne, becauſe the Application was not made in Time, that is, within the firſt four Days of this Term. *Belfield* for *Clarke*; *Bootle* and *Eyre* for the Leſſor of the Plaintiff.

Deighton, on the Demiſe of Roberts and his Wife, *againſt* Foſter. Trin. 21 Geo. 2.

RULE to ſhew Cauſe why Defendant ſhould not have Leave to plead Ancient Demeſne. Objected, and allowed, That the Motion was not made within the firſt four Days of the Term. The Rule diſcharged. As the Declaration muſt be delivered before the Eſſoign Day, the Party may always apply within the firſt four Days of the Term; and though the Appearance in Ejectment is generally entered afterwards, yet it is always conſidered as an Appearance of the firſt Day of the Term. *Bootle* for Defendant; *Poole* for Plaintiff.

, on the Demiſe of Preſton, *againſt* , in Ejectment. Hil. 21 Geo. 2.

IT appearing, by Affidavit, that one *Geldart*, the Tenant in Poſſeſſion, and his Wife, both abſconded, and could not either of them be ſerved with a Declaration in Ejectment; and that they had left a Woman Servant in the Houſe on the Premiſes, in whoſe Preſence a Declaration was fixed up. The Court made a Rule for the Tenant to ſhew Cauſe why Service of a Declaration on his Servant, at his Houſe, ſhould not be deemed good; and directed the Rule to be ſerved in that Manner.

Short, on the Demiſe of Elmes, *againſt* King. Eaſter 22 Geo. 2.

MRS. *Northcot*, the Tenant in Poſſeſſion, a ſingle Woman, abſconded and ſecreted herſelf in the Meſſuage in Queſtion, and could not be perſonally ſerved with a Declaration in Ejectment. Rule to ſhew Cauſe why Service of the Servant, at the Houſe, ſhould not be good. This Rule to be ſerved on the Servant at the Houſe. *Poole* for Plaintiff.

Orion *againſt* Mee. Mich. 25 Geo. 2.

ORION, Defendant in an Ejectment brought in the Name of *Jacob Mee*, on the joint and ſeveral Demiſes of *Powers* and *Maddiſon*, having obtained a Verdict, and one of the Leſſors being dead, and the other inſolvent, *Orion* brought Debt on the Judgment againſt Plaintiff, and ſerved Proceſs on one *Jacob Mee* of *St. Ives, Com' Hunt'*, Yeoman, as Plaintiff; who moved to ſtay Proceedings, being totally ignorant of, and unconcerned in the Matter. On ſhewing Cauſe, Mr. *Huſke*, of *St. Ives*, was alledged to be Attorney for Plaintiff in ſaid Ejectment, wherein he had made Uſe of ſaid *Mee*'s Name. Upon which the Rule was inlarged, and *Huſke* ordered to ſhew Cauſe why he ſhould not pay *Orion*'s Coſts taxed in ſaid Ejectment. *Huſke*'s Affidavit being laid before the Court, it appeared, that not he, but one *Stephenſon*, formerly his Clerk, (to whom he had reſigned his Buſineſs long before ſaid Ejectment brought, and intirely left off Practice) was Plaintiff's Attorney. *Stephenſon* made Affidavit, that he found *Jacob Mee* to be the uſual Name made Uſe of for Plaintiff in Ejectment in *Huſke*'s Office; that he uſed it purely as fictitious, and not as the Name of an exiſting or real Perſon. Lord Chief Juſtice was of Opinion, That though *Stephenſon* might have made a fictitious Plaintiff, yet as he has voluntarily made Uſe of a good Plaintiff, a real Perſon, dwelling in the ſame Town with himſelf, he ought to ſtand in his Place, and pay the Coſts. The three other Judges were of Opinion, That this Proceeding is to be conſidered purely as fictitious, and not real; and that *Jacob Mee* of *St. Ives*, or any other Perſon in human Nature, is not to be taken to be the real Plaintiff. It would be a dangerous Precedent, with Reſpect to Attornies, to make them liable to pay Coſts, whenever a Defendant in Ejectment (Leſſors of Plaintiff being inſolvent) can find out a real Perſon of the ſame Name as the fictitious Plaintiff. Nominal Plaintiff and Caſual Ejector ſtand in the ſame Light. Nominal Plaintiff cannot releaſe the Action; Caſual Ejector cannot bring a Writ of Error. No Impoſition or Miſbehaviour in *Stephenſon* appears. Where Leſſor of Plaintiff is abroad, or an Infant, Court, on Motion, interpoſe, and order a ſufficient Plaintiff to be named, or Security given for Coſts; but that is the ordinary Caſe within the common Courſe of Practice. Rule abſolute to ſtay Proceedings againſt *Mee*; diſcharged as to *Huſke*; no Rule upon *Stephenſon*. Wherein Lord Chief Juſtice acquieſced; but ſaid, he thought the Court, for the future, ſhould extend the Rule for making a good Plaintiff, or giving Security for Defendant's Coſts, to other Caſes beſides thoſe before mentioned. *Willes* for Defendant and *Huſke*; *Prime* for Plaintiff.

Roe, on the Demiſe of Stone and Wife, *againſt* Doe, in Ejectment. Trinity 26 & 27 Geo. 2.

HAYWARD, on the Behalf of *Stone*, moved, that the Conditional Rule entered into by *Stone*'s Wife, by the Name of *Anne Field*, Widow, might be ſet aſide, upon Affidavits tending to prove the Marriage between *Stone* and her; and obtained a Rule to ſhew Cauſe. Whereupon *Prime* and *Agar*, on the Part of *Anne Field*, produced Affidavits to ſhew a long Cohabitation between her and the late Counſellor *Field* of *Hertfordſhire*, as Huſband and Wife. That he had a Child by her, and deviſed the Eſtate in Queſtion to her, by the Name of his Wife. That *Stone* was married to, and lived with, another Wife. The Court thought the Validity of *Stone*'s pretended Marriage to *Field* a fit Matter to be tried; and (the Tenants in Poſſeſſion having conſented to appear) ſet aſide the Judgment ſigned againſt the Caſual Ejector, for Want of their Appearance; and ordered *Field*, the Landlady, to be added a Defendant to the Tenants; whereby *Stone*, if Plaintiff recovers, will be ſecure as to Coſts.

Roe *againſt* Doe on the Demiſe of Fearnley and Tancred.

[Omitted in Hil. 26 Geo. 2.]

ON Affidavit, that the Tenant *Lydia Brooke* Widow abſconded to avoid being ſerved; and alſo that ſhe came into Poſſeſſion ſurreptitiouſly, and of Service of Declaration in Ejectment on *James Brooke* her Son, who is her Servant and manages her Affairs, and lives in her Family; Rule, that ſhe ſhew Cauſe why ſuch Service on her Son and Servant ſhould not be deemed good Service, and leaving a Copy of this Rule at her Houſe good Service, made abſolute; no Cauſe ſhewn.

Doe *againſt* Roe on the Demiſe of Wright.

[Omitted in Trin. 26 & 27 Geo. 2.]

ON Affidavit, that *Mary Oliver* one of the Tenants is a Lunatick, that one Major *Cockburn* lives with, and tranſacts her Buſineſs, and has the ſole Conduct thereof, and of her Perſon; but would not permit the Deponent to have Acceſs to her with Declaration in Ejectment; whereupon it was delivered to *Cockburn*. Rule, that ſhe and *Cockburn* both ſhew Cauſe why this Service ſhould not be good, and Service of this Rule on him to be deemed good Service thereof. *Willes* for Plaintiff.

Fenn on the Demiſe of Hildyard *againſt* Denn. Eaſter 27 Geo. 2.

DEclaration for an Entirety. Rule obtained by *Arrundall* Tenant in Poſſeſſion to defend for two undivided Thirds only, and that for the Reſidue Plaintiff might take Judgment againſt the caſual Ejector; General Judgment ſigned, and Writ of Poſſeſſion agreeably. No Indorſement of what Part to take Poſſeſſion (as might have been;) Poſſeſſion of the whole Premiſſes taken, and afterwards two Thirds (according to a Partition made by Plaintiff's Leſſor) reſtored; Goods removed from Tenant's Houſe, Part of the Premiſſes, and ſome of them not brought back. The Court thought that a new general Rule ſhould be made to alter the Practice of taking Judgment for the whole Premiſſes, when Part is appeared for; held that the Sheriff did right in taking Poſſeſſion of the whole, purſuant to the Writ. Rule to anſwer Matters in Affidavits by Sheriff's Officers diſcharged. Ordered Goods to be reſtored by Affidavit, and Poſſeſſion of two Thirds of Premiſſes; Leſſor of Plaintiff and his Attorney (who had principally conducted the Tranſaction in the Country) to pay the Tenant Coſts of this Application. *Prime* and *Poole* for the Tenant; *Willes* and *Wynne* for Plaintiff's Leſſor, his Attorney and Sheriff's Officers.

Goodtitle on the Demiſe of Gardner *againſt* Badtitle.

THE Plea of *Marſhall* and others Landladies and Tenants in Poſſeſſion, who had appeared with the Filazer and entred into the common Rule, was left in the Prothonotary's Office, entitled with the true Name of the Cauſe, but by Miſtake in the Body of the Plea, the Name of Plaintiff's Leſſor was inſerted (as the Perſon complaining) inſtead of that of the nominal Plaintiff. Plaintiff's Attorney looking upon this Plea as null and void, ſigned Judgment againſt the caſual Ejector, which Judgment was ſet aſide with Coſts as irregular; the Plea is properly entitled and not a *Nullity*. *Willes* for *Marſhall* and others; *Prime* and *Wynne* for Plaintiff's Leſſor.

Fenn on the Demiſe of Knights *againſt* Dean. Trin. 27 & 28 Geo. 2.

ON Affidavit, That *John Abbott* Tenant in Poſſeſſion, ſecreted himſelf to prevent his being ſerved with a Declaration in Ejectment, and could not be ſerved, though frequent Endeavours had been uſed; and that the Declaration was delivered to his Daughter who kept his Houſe, (being a Publick Houſe, Part of the Premiſſes in Queſtion) and that ſhe was acquainted with the Contents of the Subſcription, The Court made a Rule for the Tenant to ſhew Cauſe why ſuch former Service ſhould not be deemed good Service, the Rule to be ſerved on the Daughter at the Houſe. This Rule was afterwards diſcharged, becauſe the Affidavit whereupon 'twas made appeared to have been ſworn before Plaintiff's Attorney as a Commiſſioner, but for no other Reaſon; *Prime* for Plaintiff; *Willes* for the Tenant.

Roe on the Demiſe of Agar *againſt* Doe.

THE Declaration was delivered to the Tenant in Poſſeſſion without any Prothonotary's Name ſet thereon. Upon Affidavit of Service, the Court made a Rule for the Tenant to ſhew Cauſe, why upon Notice of the Prothonotary's Office Judgment ſhould not be entred againſt the caſual Ejector, unleſs he (the Tenant) appeared within the uſual Time; which Rule on Affidavit of Service was made abſolute. *Willes* for Plaintiff.

Holdfaſt on the Demiſe of Dyſon and his Wife *againſt* Letgoe.

A Declaration, with Notice to appear in this Term, had been ſerved on the Tenant in Poſſeſſion before the Eſſoign Day, but no Prothonotary's Name was ſet thereon. Upon the Motion of Serjeant *Hewitt* for Plaintiff, The Court made a Rule, That unleſs *John Riley* Tenant in Poſſeſſion, upon ſix Days previous Notice of that Rule, and Notice that the Declaration is entred in the Office of Mr. Prothonotary *Wegg*, ſhould appear and plead within four Days next after the End of the next Term (being the iſſuable Term, and this a Country Cauſe) to a new Declaration at the Plaintiff's Suit, and enter into the common Rule for confeſſing Leaſe, Entry and Ouſter, Judgment might be entred againſt the caſual Ejector.

Goodtitle on the Demiſe of Cooper *againſt* Thruſtout. Hil. 28 Geo. 2.

IN the like Caſe (as next before) in a Country Cauſe, where the Declaration was delivered before the Eſſoign Day with Notice to appear in this Term; upon an Affidavit ſhewing the Service to be good in all Reſpects ſave the Want of Prothonotary's Name, the Court made the like Rule, unleſs *T. M.* and *W. M.* Tenants in Poſſeſſion within ſix Days next after Notice of that Rule, and Notice that the Declaration is entred in the Office of Mr. Prothonotary *Wegg*, ſhould appear, *&c.* Judgment might be entred againſt the caſual Ejector. *Prime* for Plaintiff.

Roe on the Demiſe of Leak Widow, and others, *againſt* Doe. Mich. 29 Geo. 2.

WILLES for *Joſeph Simpſon* and *Mary* his Wife, who claimed Title to Part of the Premiſſes (of which Part *Forwenſon* and *Harriſon* were Tenants, and refuſed to appear) applied upon Affidavit of the Fact for Leave to appear for ſaid *Simpſon* and Wife as to ſaid Part. Rule made to ſhew Cauſe; on ſhewing Cauſe it appeared, That the Leſſors of Plaintiff and ſaid *Simpſon* and Wife claimed Title as Deviſees, the Leſſors under one Will, and *Simpſon* and Wife under another Will of the ſame Teſtator; and the Queſtion to be decided was, which Will ſhould prevail. The Leſſors of Plaintiff had got the Start of *Simpſon* and Wife; and by bringing their Ejectment firſt (the Tenants refuſing to appear) would get into Poſſeſſion without Defence, unleſs *Simpſon* and Wife were permitted to defend. *Per Cur'*: This Motion is founded on the late Act of Parliament, 11 *K. Geo.* 2. The Court have no Juriſdiction to admit any Perſon to defend an Ejectment inſtead of the Tenant, except the Landlord only; And who is Landlord within the Act? Not every Perſon claiming Title; but one who is in ſome Degree of Poſſeſſion, as receiving Rent, *&c.*

the Clauſe of Forfeiture by Tenant, if he does not give Notice of Declaration to his Landlord, proves this. *Davy* quoted 2 *Strange* 1241. *Jones* on Demiſe of *Woodward* againſt *Williams*; where a Mortgagee was refuſed to be admitted to defend as Landlord; which Caſe (though not ſo reported) muſt be where the Mortgagee had not got into Poſſeſſion. *Willes* for *Simpſon* and Wife; *Prime* and *Davy* for Leſſors Plaintiff.

Doe on the Demiſe of Deily *againſt* Roe. Eaſter 29 Geo. 2.

THE Affidavit of Service of Declaration, *&c.* was on the Wife of *Daniel Doughorty*, Tenant in Poſſeſſion, as ſhe informed Deponent, and as he verily believes held ſufficient, and Rule made for Judgment unleſs the Tenant, *&c.* ſhall appear. *Davy* for Plaintiff.

N. B. The Chief Juſtice was not in Court.

Boman *againſt* Noright. Trin. 31 Geo. 2.

IN Ejectment for ancient Demeſne Land, within the Manor of *Godmancheſter*, County *Huntingdon*, Rule abſolute to ſtay Proceedings in this Court; ancient Demeſne has always been held a good Plea in Ejectment. Plaintiff had at firſt brought an Ejectment in *Godmancheſter* Court but dropped it, and then brought the Preſent Ejectment in this Court.

Error.

Trinity 18 & 19 Geo. 2.

AFTER an Award of Execution againſt Bail on a Recognizance in Error, they brought a Writ of Error as to ſuch Award of Execution. Plaintiff moved for Leave to take out Execution for Want of Bail on the Writ of Error brought by the

Bail; and obtained a Rule to ſhew Cauſe; which was diſcharged; no Bail in this Caſe being required. *Prime* for Defendant; *Eyre* for Plaintiff.

Stone *againſt* Rawlinſon, in Error. Mich. 19 Geo. 2.

RULE to ſhew Cauſe why *Nonpros* of a Writ of Error, for Want of tranſcribing the Record, ſhould not be ſet aſide with Coſts. Objected, That no final Judgment is entred, and therefore no Tranſcript could be made. The *Nonpros* ſet aſide, without Coſts. It appeared that the Clerk of the Judgments was paid his Fee, by Plaintiff's Attorney, for entering the final Judgment, which he had neglected to do; but Plaintiff did not pray any Rule againſt him. *Prime* for Plaintiff; *Skinner* and *Agar* for Defendant.

Evidence.

Parrot *againſt* Benn. Mich. 8 Geo. 2.

THE Court held, that a Condemnation upon a Foreign Attachment in *London*, which appeared on the Record to be ſubſequent to this Action brought, could not be given in Evidence againſt Plaintiff at the Trial.

Smith *againſt* Richardſon. Mich. 11 Geo. 2.

THIS was an Action for ſcandalous Words, importing that Plaintiff was a Thief, and had robb'd Defendant of his Beer. Plaintiff was Beer Butler of a College at *Oxford*, and laid Special Damage. Defendant, at the Trial, offered to prove the Truth of the Words in Mitigation of Damages: And Mr. Baron *Forteſcue*, who tried the Cauſe, refuſed to admit ſuch Evidence, but reſerved the Point. The twelve Judges met, and eight were of Opinion, that where the Words amount to Treaſon or Felony, Defendant, on the General Iſſue, ought not to be admitted to prove the Truth of the Words; and the *Poſtea* was ordered to be delivered to Plaintiff.

Vide Title Trials, &c.

Executions, Execution of Proceſs, &c.

Warwick *againſt* Figg. Mich. 6 Geo. 2.

EXECUTION was taken out after a Writ of Error allowed, and Bail put in thereupon: And the Queſtion was, Whether ſuch Execution was regularly iſſued or not? It was urged for Plaintiff, that the Writ of Error being returnable *tres Trin'* was ſpent before the final Judgment ſigned, which was not 'till the 30th of *June* after the End of *Trinity* Term, and that therefore the Execution was regular. On the other Side it was alledged, That by the Writ of Error the Record was tranſcribed into the *King's Bench*; that the Writ of Error was not ſpent; that the final Judgment ſigned in *Trinity* Vacation relates to the firſt Day of *Trinity* Term, and that therefore the Writ of Error is a *Superſedeas* to it, and the Execution in Queſtion bears Teſt the laſt Day of *Trinity* Term: If Plaintiff had ſtayed 'till *Michaelmas* Term following before he had ſigned final Judgment, as in the Caſe of *Joy* and *Fanſhaw*, he might have had ſome Colour to take out Execution (though that is a Practice not to be encouraged); the Court were of that Opinion, and ordered the Execution to be ſet aſide, and Reſtitution and Coſts; and ordered an Attachment *Niſi*, againſt *Wreathocke*, Plaintiff's Attorney, to ſtand over him 'till he ſees Reſtitution made, and Coſts paid.

Oates *againſt* Foreſt.

JUdgment was obtained *in Com' Midd'*, and a *Fi. Fa.* iſſued in that County, and returned *Nulla bona*; and thereupon a *Fi. Fa.* was iſſued in *London*, but was not made a *Teſtat' Fi. Fa.* And the Court being moved to ſet aſide the *Fi. Fa.* in *London,* for want of its being made a *Teſtat',* refuſed ſo to do, being of Opinion that the Award of the *Teſtat' Fi. Fa.* upon the Roll was ſufficient to warrant a *Fi. Fa.* into *London,* and that it need not be made a *Teſtatum.*

Sympſon *againſt* Gray and his Wife, and another. Hil. 6 Geo. 2.

JUdgment of *Michaelmas* Term 1731, ſigned *Nov.* 13. *Fi. Fa.* bore Teſt *November* 28 in *Michaelmas* Term following. Defendant moved to ſet aſide the *Fi. Fa.* as irregular, the Judgment not being revived by *Sci. Fa.* and the *Fi. Fa.* not being iſſued within the Year: Plaintiff inſiſted that the *Fi. Fa.* being iſſued within the fourth Term from the Time of ſigning Judgment, it was regular, and produced an Affidavit that Execution had been ſome Time ſtaid by an Injunction out of *Chancery.* Court held the Injunction to be quite out of the Caſe, and that the Year is to be computed from the Day of ſigning Judgment, and therefore ſet aſide the *Fi. Fa.*

Cooke *againſt* Horrock. Eaſt. 6 Geo. 2.

A Motion was made to ſet aſide an Execution iſſued after a Writ of Error allowed, and Notice thereof given to Plaintiff's Attorney: It appeared that an interlocutory Judgment was ſigned, and a Writ of Inquiry executed in *Michaelmas* Term laſt, and a Writ of Error was then allowed, and Notice given; but the final Judgment was not ſigned 'till after the Beginning of *Hilary* Term laſt. The Court held the Execution to be regular, the interlocutory Judgment not being removable by the Writ of Error; and the final Judgment being ſigned of a ſubſequent Term, was not removed, and therefore refuſed to make any Rule.

Dakeyne *againſt* Thornhill.

A Queſtion aroſe, Whether the Plaintiff could levy Poundage and other neceſſary Charges, beſides the Coſts taxed, out of a Penalty? And the Court held he might; if the Defendant ſhould think himſelf aggrieved, the Court, upon Application would refer the Matter to the Prothonotary, to inquire whether the Plaintiff hath levied more than he ought to have done, or not.

White *againſt* Morgan.

A Writ of Error was brought, returnable on the Eſſoin-Day of *Hilary* Term; the final Judgment was ſigned of the ſame Term, 26th of *January*; and Plaintiff took out Execution, apprehending the Judgment not to be removed by the Writ of Error. *Chapple* moved to ſet aſide the Execution, and inſiſted that the Judgment relates to the Eſſoin-Day, and is a Judgment from that Day; and the Court will not make a Fraction of the Day, ſo conſequently the Record is removed by the Writ of Error. *Hawkins*, for Plaintiff, inſiſted that the Judgment muſt be given before the Return of the Writ of Error; and if given upon the Return-Day of the Writ of Error, is not removed by that Writ. The Court held the Record well removed, and ſet aſide the Execution, with Coſts: By Conſent no Action to be brought.

Snape and others, Aſſignees, *againſt* Hancock. Trin. 6 & 7 Geo. 2.

PER Cur': Plaintiff cannot ſue out *Ca. Sa.* and *Fi. Fa.* againſt Defendant at the ſame time, and take out the Sheriff's Warrants thereon: This was not the main Queſtion, but was incidentally ſaid. *Per Cur':* Plaintiff, in this Caſe, had executed both *Ca. Sa.* and *Fi. Fa.* and both were ſet aſide as irregular.

Gale *againſt* Hooker. Hil. 7 Geo. 2.

A Writ of falſe Judgment was delivered to the Under-Sheriff, but no Money was tendered or paid for the Return; for want whereof the Sheriff took no Notice of it, and executed a Writ *de Executione Judicii*. Upon hearing Counſel on both Sides, the Sheriff's Proceeding was held to be regular. *Per Cur'*: The Defendant, if he thinks fit, may ſtill proceed upon his Writ of Falſe Judgment. *Glyde* for Defendant; *Chapple* for Plaintiff.

Hann *againſt* Capell.

A Motion was made to have Rent paid to the Landlord out of the Money levied in Execution in this Cauſe. It appeared, upon ſhewing Cauſe, that the Sheriff's Warrant on the Execution, after it was ſealed, had been altered, and a new Bailiff's Name inſerted. *Per Cur'*: The Warrant being altered, no Goods are taken in Execution thereby; but let the Bailiff and the Attorney, who were privy to the Alteration, ſhew Cauſe why an Attachment ſhould not be iſſued againſt them. *Belfield* for the Sheriff; *Skinner* for the Landlord.

Dutton *againſt* Pitt, Eſq; Eaſt. 7 Geo. 2.

THE Defendant being brought up by *Habeas Corpus* from the *King's Bench* Priſon, in order to be charged in Execution at the Plaintiff's Suit: Moved by *Darnal* to be remanded, upon an Affidavit that he was a Member of the laſt Parliament, and continued ſo to the End of the Seſſions; it appearing by the Return of the *Habeas Corpus*, that the Defendant was taken by Proceſs out of the Court of *King's Bench* ſince the End of the laſt Seſſion of Parliament, and was not charged with any Proceſs here, the Court did not think it proper that he ſhould be charged in Execution upon the Judgment, but remanded him in order that he might move the Court of *King's Bench* to be diſcharged from the Actions there; becauſe if the firſt taking and Detainer were illegal, he ought not to be charged in Execution here.

Patrick *againſt* Pettis.

THE Queſtion was, Whether the Landlord's Rent ſhould be paid out of the Monies levied in Execution upon the Defendant's Goods, who was a Bankrupt; and thereupon another Queſtion aroſe, Whether or no, if the Defendant was a Bankrupt before the Levy, the Goods were liable to Payment of the Rent. The Court thought it a proper Matter to be determined by a Jury, whether the Defendant was a Bankrupt, or not, at the Time of the Levy, and directed an Iſſue to be tried accordingly. *Wright* for the Landlord; *Baynes* for the Aſſignees.

Pigot *againſt* Charlewood. Trin. 7 & 8 Geo. 2.

DEfendant taken in Execution when he was attending the Execution of a Writ of Enquiry as Attorney for his Client, moved to be diſcharged. *Urlin* ſhewed Cauſe. *Cur'* diſcharged him.

Maule *againſt* Grubb.

FORREST having attended Prothonotary to tax Coſts for not proceeding to Trial, on his Return home was arreſted on a *Ca. Sa.* out of the *King's Bench*. *Cur'* ſaid they could not diſcharge him from the *King's Bench* Proceſs; but on producing an Affidavit of Notice, ordered the Officer and Plaintiff to ſhew Cauſe why they arreſted him, and why the Goods pledged with them for his Enlargement ſhould not be reſtored. *Comyns* for *Forreſt*; on ſhewing Cauſe, it appeared that the Goods were ſold voluntarily by *Forreſt* to the Plaintiff. Rule diſcharged. *Birch* for Plaintiff.

Bond *againſt* Jacob and others. Trin. 8 & 9 Geo. 2.

CHAPPLE moved to ſet aſide a Writ of *Teſtatum Fieri Facias* iſſued immediately after Judgment, and before a *Fi. Fa.* returned and filed to warrant it; and the Court made a Rule to ſhew Cauſe. *Eyre* for Plaintiff ſhewed Cauſe, and produced a *Fi. Fa.* returned in the proper County; and thereupon the Rule was diſcharged.

Cramborne *againſt* Quennel. Hil. 9 Geo. 2.

PLaintiff moved to be at Liberty to take out Execution, the Writ of Error brought by Defendant being become ineffectual by the Death of the late Lord Chief Juſtice of this Court. *Per Cur'*: Let Defendant ſhew Cauſe. There were ſeveral other Motions of the ſame Kind this Term; and it was held by the Court, that where the Writ of Error is not returned by the Chief Juſtice, it becomes ineffectual; but Plaintiff cannot take out Execution without Leave of the Court. 1 *Syd.* 168. *Allen* againſt *Shaw*.

Olorenſhaw *againſt* Stanyforth.

HELD, upon hearing Counſel on both Sides, that the Writ of Error not being returned, and ſigned by the Chief Juſtice, becomes ineffectual by his Death; and the Rule to ſhew Cauſe why Plaintiff ſhould not have Leave to take out Execution was made abſolute. *Dyer* 173. *Wright* for Plaintiff; *Birch* for Defendant.

Hayes *againſt* Thornton.

THE Writ of Error being become ineffectual by the Death of the Chief Juſtice, the Return not being ſigned by him, and conſequently the Record not removed, Plaintiff took out Execution without Leave of the Court, which was held to be irregular: The Court muſt be moved for Leave before Execution can regularly be taken out. *Giggeer*'s Caſe. *Salk.* 264. *Brown* againſt *Randall*, *Hil.* 1 *Geo.* 1.

Humphreys *againſt* Daniel. Eaſter 9 Geo. 2.

PLaintiff recovered Judgment; Defendant brought a Writ of Error, and pending that Writ Plaintiff brought an Action of Debt on the Judgment, and after Judgment therein levied Execution: And the Queſtion was, Whether Plaintiff could do this without Leave of the Court. *Per Cur'*: Defendant might have moved the Court to ſtay Proceedings in the Action on the Judgment, pending the Writ of Error, which is always granted; but having made no ſuch Application Plaintiff is regular. *Corbet* for Defendant; *Chapple* for Plaintiff.

Fiſher *againſt* Carruthers, Bail for D.

PLaintiff having recovered Judgment in the Original Action for 26*l.* levied 13*l.* on the Goods of Defendant, one of the Bail, with Intent to levy the remaining 13*l.* on the Goods of *B.* the other Bail; but the Effects of *B.* amounting to no more than 6*l.* Plaintiff had Reſort back again to the Goods of Defendant, and by a ſecond Execution levied 7*l.* more, being the Reſidue of the 26*l.* recovered. This was held to be irregular. Plaintiff cannot levy by Parcels without Defendant's Requeſt and Conſent; he might have levied the whole upon Defendant at firſt (who it appeared had then Goods ſufficient to anſwer). The Rule to ſhew Cauſe why the ſecond *Fi. Fa.* againſt Defendant ſhould not be ſet aſide, and Reſtitution, was made abſolute. *Wynne* for Defendant; *Belſield* for Plaintiff.

Maſon *againſt* Simmonds and Eleven others.

JOINT Action againſt ſeveral Defendants; Damages 20*l.* againſt Four of them on Trial, and 5*s.* againſt one Defendant who had let Judgment go by Default. Writ of Error brought by the Four in the Name of the one who was not obliged to find Bail becauſe it was by Default. Motion by *Agar* for Leave to take out Execution againſt the Four, notwithſtanding ſuch Writ of Error. *Cur'*: Shew Cauſe. Rule made abſolute *Trinity* next on Affidavit of Service.

Richard *againſt* Davis. Trin. 11 & 12 Geo. 2.

MOTION by *Skinner* to ſet aſide Execution upon a Judgment in this Court; on which Judgment an Action of Debt was brought in the Mayor's Court of the City of *Worceſter*, and Defendant was arreſted in the ſaid Mayor's Court, and afterwards Plaintiff took out Execution in this Court. Rule to ſhew Cauſe why Plaintiff ſhould not make his Election.

Berriman *againſt* Gilbert and his Wife. Eaſter 12 Geo. 2.

THE Debt was contracted by the Woman while ſole, and Plaintiff having recovered Judgment, both Huſband and Wife were taken in Execution. *Eyre* moved to diſcharge the Wife, and cited *Miles* againſt *Williams*, *Trin.* 12 *An. in B. R.* where it was ſaid *arguendo*, though it was not the Point in Queſtion, that the Wife cannot be taken in Execution; but the Court held otherwiſe, and diſcharged the Rule. On Meſne Proceſs the Woman might perhaps have been diſcharged on a common Appearance; but no Inſtance can be ſhewn where ſhe has been diſcharged from an Execution. *Wright* for Plaintiff.

Robinſon *againſt* Tuckwell. Mich. 13 Geo. 2.

THE ſame Caſe as *Humphreys* againſt *Daniel*, *Eaſter* 9 *Geo.* 2. and the ſame Determination. *Eyre* for Defendant; *Wright* for Plaintiff.

Clarkſon *againſt* Phyſick.

AFTER Judgment in an Action of Debt on a former Judgment, and *Ca. Sa.* delivered to the Sheriff, Defendant moved to ſtay Execution pending a Writ of Error brought to reverſe the former Judgment. Shew Cauſe. *Per Cur'*: The Motion comes too late; it ought to be before Judgment in the later

Action. Rule diſcharged. *Comyns* for Defendant; *Eyre* for Plaintiff.

Bevan *againſt* Jones. Trinity 13 & 14 Geo. 2.

THE Court were of Opinion, That after Execution executed, though the Judgment be for a Penalty, they have not Juriſdiction at Common Law, or by Statute, to refer to the Prothonotary to examine into the Sum due for Principal, Intereſt and Coſts, and into the *Quantum* levied, and to order Reſtitution of the Overplus, without Conſent, but Defendant muſt ſeek Relief in a Court of Equity. Rule to ſhew Cauſe diſcharged. *Belfield* for Defendant; *Birch* for Plaintiff.

Calcraft *againſt* Swann. Hil. 14 Geo. 2.

DEfendant became a Bankrupt, and after his Certificate allowed, his Goods were taken in Execution. Defendant obtained a Rule on the Statute 5 *Geo.* 2. *ſect.* 7 & 20. to ſhew Cauſe why the *Fi. fa.* ſhould not be ſet aſide, and Reſtitution. *Per Cur:* We are not required by the Statute to proceed in a Summary Way, as to the Goods of a Bankrupt, though as to his Perſon we are. If the Defendant did not obtain his Certificate in Time, ſo as to plead it, he may bring an *Audita Querula*. The Rule was diſcharged. *Willes* for Plaintiff; *Skinner* for Defendant.

Pickering *againſt* Landon. Eaſter 14 Geo. 2.

JUdgment was entered in 1736, in *Cooke*'s Office; in 1739 two *Scire facias's* in *Borrett*'s Office were returned *Nichil*, and the Judgment being revived, a *Fi. fa.* and afterwards a *Venditioni exponas* iſſued out of *Borrett*'s Office; after the Execution whereof, and an Action tried againſt the Sheriff of *Northamptonſhire*, for a falſe Return on the *Venditioni exponas*, Defendant moved, and had a Rule to ſhew Cauſe why the Writs of *Fi. fa.* and *Venditioni exponas* ſhould not be ſet aſide; inſiſting, that they were irregular, and ought to have been in *Cooke*'s Office. It was urged for Plaintiff, that a *Sci. fa.* is as much a new Suit as an Action of

Debt, and is not confined to the Office where the Judgment is entered, but may be brought in any other. *Per Cur*: By an old Rule of this Court in 1654, the whole Proceedings after Appearance ought to be in one and the ſame Office; a *Sci. fa.* is not a new Action, but a Continuance of the ſame Suit, and the *Fi. fa.* and *Venditioni exponas* are irregular; but the Application to ſet them aſide, ought to be made in due Time. The *Fi. fa.* iſſued ſo long ago as 1739, it is not reaſonable, after what has paſſed, for the Court to interpoſe now. The Rule was diſcharged. *Prime* and *Draper* for Plaintiff; *Skinner* and *Willes* for Defendant.

Meriton *againſt* Stevens. Mich. 15 Geo. 2.

JUdgment was ſigned 28th *October*, and 29th *October*, between five and ſix in the Evening, the Sheriff took Poſſeſſion of Defendant's Goods, by Virtue of a *Fi. fa.* Defendant moved to ſet aſide the *Fi. fa.* a Writ of Error having paſſed the Great Seal in the Morning of the 29th; but it was not pretended to have been allowed by the Clerk of the Errors before the *Fi. fa.* executed. And the Queſtion was, From what Time the Writ of Error is to be deemed a *Superſedeas*? The Court, after Conſideration, determined, That it is not a *Superſedeas* from the Sealing, but from the Delivery to the Clerk of the Errors, according to a Rule of this Court, *Mich.* 28 *Car.* 2. *Wynne* for Defendant; *Skinner* and *Draper* for Plaintiff. This was the Point determined, whereupon the Parties entered into an equitable Rule by Conſent.

Thompſon *againſt* Briſtow. Mich. 16 Geo. 2.

JUdgment was entered 11th & 12th, revived in *Eaſter* Term 13th *Geo.* 2. and Defendant was taken in Execution in *July* 1741, and was then diſcharged by Plaintiff's Conſent; and a written Agreement was entered into by the Parties, that the Judgment ſhould ſtand revived for twelve Months. After more than a Year from the laſt *Ca. ſa.* Plaintiff cauſed Defendant to be again taken in Execution, without Continuance on the Roll; replying upon the written Agreement. The Court held the Agreement to be null and void; and made the Rule abſolute to ſet aſide the laſt *Ca. ſa.* and diſcharge Defendant out of Cuſtody. *Skinner* and *Agar* for Defendant; *Willes* for Plaintiff.

Aſhdowne *againſt* Fiſher. Trinity 16 & 17 Geo. 2.

DEfendant rendered in Diſcharge of Bail, and his Perſon was diſcharged out of Execution by the Court as a Bankrupt, purſuant to the Statute. His Goods were afterwards taken by a *Fi. fa.* and he applied to have them releaſed, and obtained a Rule to ſhew Cauſe, which was diſcharged. The Court held that the Goods may be taken; there is no Clauſe in the Statute which extends to the Goods. *Skinner* for Plaintiff; *Bootle* for Defendant.

Eaton *againſt* Southby.

AFTER the Record removed into the *King's Bench* by Writ of Error, Defendant died; Plaintiff moved for Leave to ſue out of this Court a *Sci. fa.* againſt Defendant's Executors, and obtained a Rule to ſhew Cauſe; which was diſcharged. The Record being removed out of this Court, the Motion is improper here. *Bootle* for Plaintiff; *Belfield* for Defendant.

Martin *againſt* Ridge.

DEfendant obtained a *Superſedeas* for Want of a Declaration, in an Action of Debt on Judgment, and was afterwards taken in Execution by a *Capias ad Satisfac'* iſſued after a Year and Day from the Time of the Judgment, without any *Sci. fa.* to revive. Defendant brought his Action for Falſe Impriſonment, and Plaintiff juſtified under the *Ca. ſa.* Defendant now applied to ſet aſide the *Ca. ſa.* and it appearing that a *Ca. ad reſpond'* only, and not a *Ca. ſa.* had iſſued within the Year, there was nothing to warrant the Continuance of a *Ca. ſa.* on the Roll. And the Rule was made abſolute to ſet aſide the *Ca. ſa.* *Draper* for Plaintiff; *Belfield* for Defendant.

Rownſon and his Wife *againſt* Williamſon. Mich. 17 Geo. 2.

ACTION brought for the Labour of Plaintiff's Wife, done for Defendant during Coverture. Plaintiffs failed in the Action, and the Wife only, without the Huſband, was taken in Execution by *Ca. ſa.* for Coſts. The Court held, That as the Demand did not accrue to the Wife *dum ſola*, ſhe was wrongfully joined a Party in the Action; and that the Wife, who, by Law, is ſuppoſed to have nothing whereout to make Satisfaction, ought not to be detained in Execution. The Rule to diſcharge the Wife was made abſolute. If, in ſuch Caſe, the Wife could be detained, a run-away Huſband would have it in his Power to procure his Wife to be impriſoned. *Bootle* for the Wife; *Prime* for the Defendant.

Pickering and his Wife *againſt* Thomſon, Bail for Miller. Hilary 17 Geo. 2.

JUdgment in *Middleſex* againſt the Principal, *Sci. fa.* againſt the Bail in *Middleſex*, and Award of Execution, *Fi. fa.* in *Middleſex*, and nothing levied; *poſt ann' & diem* two *Scire facias's* to revive the Award of Execution returned *Nichil* in *London*, and *Fi. fa.* thereon in *London*, and Levy there. Rule abſolute to ſet aſide the *Fi. fa.* in *London*, and for Reſtitution. *Sci. fa.* to revive a Judgment, or Award of Execution, muſt be in that County where Judgment is recovered, or Execution awarded. *Sci. fa.* againſt Bail may be in *Middleſex* (Record of the Recognizance being at *Weſtminſter*) or in the County where the Caption of the Recognizance appears to be on Record, if in any other County except *Middleſex*. *Hayward* for Defendant; *Agar* for Plaintiff.

Farſide, on the Demiſe of Lord Sidney Beauclerk and others, *againſt* Hayley.. Trinity 17 & 18 Geo. 2.

AFTER a Verdict for Plaintiff, Motion for Leave to take out Execution on the Judgment againſt the Caſual Ejector, *non obſtante* a Writ of Error brought by Defendant *Hayley*, the Rule to ſhew Cauſe was diſcharged. *Per Cur'*: In Caſes where the Landlord is permitted to defend without the Tenant, the Reaſon of Judgment againſt the Caſual Ejector, *per* Statute, is, that under it, after an End of the Suit Plaintiff may obtain Poſſeſſion of the Premiſes ſued for, which he could not do by Virtue of a Judgment againſt a Perſon out of Poſſeſſion. But where a Writ of Error is brought, there is not the leaſt Reaſon to give Plaintiff Leave to take Poſſeſſion till after a Determination in Error. *Skinner* for Plaintiff; *Willes* for Defendant.

Burdus *againſt* Satchwell. Hil. 18 Geo. 2.

AFTER a Writ of Error allowed, Plaintiff brought Action on Judgment, and Bail was juſtified. Afterwards the Writ of Error was nonproſſed for Want of tranſcribing the Record. Plaintiff, without diſcontinuing his Action on the Judgment, took Defendant's Goods in Execution by *Teſtat. Fi. fa.* which was held irregular, and the *Teſtat. Fi. fa.* ſet aſide, and the Goods ordered to be reſtored, with Coſts. Plaintiff will be at Liberty to take out Execution after diſcontinuing his Action on Judgment. *Skinner* and *Draper* for Plaintiff in Error; *Willes* and *Prime* for Defendant in Error. *Obiter per Cur'*: No Rule to tranſcribe ought to be given till the Record is brought in. In Caſe of a *Teſtat. Fi. fa.* the Court will not go into a nice Enquiry when the *Fi. fa.* in the Original County to warrant the *Teſtat.* was ſued out; it is ſufficient if the firſt *Fi. fa.* returned be produced.

Sykes, on the Demiſe of Oates and others, *againſt* Dawſon, in Ejectment. Hilary 18 Geo. 2.

DAWSON, the Landlord, was made Defendant by Rule, the Tenant in Poſſeſſion not appearing. After Verdict for Plaintiff, Defendant the Landlord brought a Writ of Error, and ſerved Plaintiff's Attorney with a Rule to be preſent at taxing Coſts. Plaintiff ſigned no Judgment on the Verdict, but moved the Court, producing the *Poſtea*, and obtained a Rule of Courſe for Leave to take out Execution againſt the Caſual Ejector. Defendant perceiving this allowed and ſerved Notice of his Writ of Error, and moved to ſtay Proceedings on the Judgment. *Per Cur:* The Writ of Error is no *Superſedeas* before delivered to the Clerk of the Errors to be allowed. *Vide Meriton* againſt *Stephens*, *Mich.* 15 *Geo.* 2. where, ſo far as Execution had gone, it ſtood, and further Proceedings only were ſtayed. In this Caſe the Writ of *Habere fac' poſſeſſion'* was executed. No Rule. *Wynne* and *Bootle* for Defendant.

Smith and his Wife *againſt* Phripp, one, &c. Mich. 20 Geo. 2.

JUdgment was obtained in *Middleſex*, and Defendant was taken 8th *May* laſt by a *Teſtat. Ca. ſa.* out of *Middleſex* into *Somerſetſhire*. Objected, That no *Ca. ſa.* in *Middleſex* was returned to warrant the *Teſtat'*, as appeared *per* Search in *Eaſter* and *Trinity* Terms laſt; but after the Search a *Ca. ſa.* in *Middleſex* was returned, and entered in the Sheriff's Books. The Court declared, that had the Application been recent, they muſt *ex Debito Juſtitiæ* have taken Notice of it; but as Defendant had ſo long acquieſced, and as poſſibly an Action for an Eſcape might have been brought againſt the Sheriff of *Somerſetſhire*, the Rule to ſhew Cauſe why the *Teſtat. Ca. ſa.* ſhould not be ſet aſide, was diſcharged. *Belfield* for Defendant; *Willes* for Plaintiff.

Turner *againſt* Cowper. Hilary 20 Geo. 2.

AFTER a Rule by Conſent to refer it to the Prothonotary, to inquire into the *Quantum* of the Debt and Value of Goods levied, and before Prothonotary had made his Report, Plaintiff died. Upon the Application of Plaintiff's Executor, who offered to ſtand in Plaintiff's Place, he was made a Party to the Rule; and the Prothonotary was directed to proceed, without the Conſent of Defendant to this Rule. *Prime* and *Draper* for Plaintiff's Executor; *Skinner* and *Willes* for Defendant.

Low *againſt* Beart. Eaſter 20 Geo. 2.

RULE to ſhew Cauſe why *Fi. fa.* ſhould not be ſet aſide, the Judgment being above a Year old, and not revived by *Sci. fa.* nor any Continuances of *Fi. fa.* entered on Record; Plaintiff, before Cauſe ſhewn, entered the Continuances, and produced intervening Writs of *Fi. fa.* to warrant the ſame. Rule diſcharged *ſans* Coſts. *Elegit* may be continued before ſuing out the Writ, *Fi. fa.* or *Ca. ſa.* cannot be continued without ſuing out the Writ. *Prime* for Plaintiff; *Draper* for Defendant.

Stanynought, one, &c. *againſt* and ſeven others. Mich. 21 Geo. 2.

AFTER Judgment in a Joint Action againſt all the Defendants, Plaintiff ſued out a *Fieri facias* againſt the Goods of , one of the Defendants, only. Motion *per Leeds*, for Defendant to ſet aſide the *Fieri facias*, and for Reſtitution. *Skinner* and *Draper*, for Plaintiff, prayed to amend the *Fieri facias* by the Judgment, and quoted *Browne* againſt *Hammond*, *Eaſter* 12 *Geo.* 2. The Parties came into Terms of Agreement between themſelves, without any Determination by the Court; and, by Conſent the Rule was made abſolute, with Coſts.

De

De Revoſe, Executor, *againſt* Hayman.

DEfendant having brought a Writ of Error, and put in Bail thereon ſoon after, was laſt Term ſerved with a Rule for better Bail, and thereon gave Notice to juſtify at a Judge's Chamber, but did not. The Bail not being juſtified within four Days, Plaintiff took a Certificate thereof from the Clerk of the Errors, and ſued out a *Ca. ſa.* which was held to be regular. Defendant has not Time of Courſe to perfect his Bail till the Term next following, where the Rule is ſerved in Vacation, but ought to juſtify before a Judge; and if Plaintiff be not ſatisfied with that, then Defendant, having done every Thing in his Power, is intitled to Time till the next Term, but not otherwiſe. *Poole* for Defendant; *Skinner* for Plaintiff.

Sweetapple *againſt* Atterbury. Trin. 22 & 23 Geo. 2.

PLaintiff having obtained Judgment in *Middleſex*, ſued out in the firſt Inſtance a *Teſtat. Fi. fa.* into *Warwickſhire*, and took Defendant's Goods in Executon. Defendant moved to ſet aſide the *Teſte. Fi. fa.* for Want of a *Fi. fa.* returned *Nulla Bona* in *Middleſex* to warrant it. Plaintiff, after the *Teſtat. Fi. fa.* excuted as aforeſaid, and Notice of Motion, but before the Motion made, got a *Fi. fa.* in *Middleſex* returned; which the Court held ſufficient, and diſcharged the Rule to ſhew Cauſe. *Wynne* for Defendant; *Draper* for Plaintiff.

Weſt and his Wife *againſt* Hedges. Hilary 24 Geo. 2.

A Bill of Sale held to be a Removal of Goods taken by a *Fi. fa.* and a Year's Rent ordered to be paid the Landlord out of the Money levied by the Sheriffs of *London*. *Draper* for *Stere* the Landlord; *Prime* for Plaintiff.

Incledon *againſt* Clarke, in Error. Eaſter 25 Geo. 2.

AFTER Writ of Error allowed, and Notice thereof given, Plaintiff in the Judgment executed a *Fi. fa.* for Want of Bail within four Days; Defendant moved to ſet aſide the *Fi. fa.* ſuggeſting that Plaintiff could not regularly take out Execution, till after a Certificate from the Clerk of the Errors that no Bail was put in. The Court diſcharged the Rule. Such Certificates have been frequently taken out of Caution, but are not eſſentially neceſſary. The Statute 16 & 17 *Car.* 2. is poſitive as to Bail within four Days. *Vide* General Rules, *Trinity & Mich.* 28 *Car.* 2. No Bail is yet put in; Bail ought to have been put in before the Motion. A Queſtion aroſe, Whether after Bail perfected the Goods can be reſtored? *Vide* Meriton *againſt* Stevens, *Mich.* 16 *Geo.* 2. Sykes *againſt* Dawſon, *Hil.* 18 *Geo.* 2. Held, that if Defendant's Perſon be taken by a *Ca. ſa.* and Bail in Error afterwards perfected, the Perſon ſhall be diſcharged; but in Caſe of a *Fi. fa.* the Proceedings, ſo far as the Sheriff hath gone, muſt ſtand. *Draper* for Plaintiff; *Willes* for Defendant.

Betts on the Demiſe of Robſon *againſt* Egerton, in Ejectment. Hil. 28 Geo. 2.

LEWIS Manſon Watſon, Eſquire, Defendant's Landlord. Rule to ſhew Cauſe why Writ of *Hab. fac. Poſſ.* ſhould not be ſet aſide, and Poſſeſſion reſtored, *&c.* Plaintiff obtained a Verdict at the Summer Aſſizes in *Kent* 1*ſt July* 1754. Defendant brought a Writ of Error, which was allowed 29 *Oct.* but entered into no Recognizance, nor put in any Bail thereon, Plaintiff not having got Coſts taxed on the final Judgment, (without which the Meaſure or Quantum of the Recognizance could not be fixed) Plaintiff for want of the Recognizance required by the Statute, or Bail within four Days, took out a Writ of *Hab. fac. Poſſ.* and by Virtue thereof, on 4th *November* took Poſſeſſion of the Premiſſes late in Queſtion, which the Court held to be regular. Defendant ſhould have applied to ſtay Execution, and then the Court would have obliged Plaintiff to have procured his Coſts to be taxed; the Writ of Error is no *Superſedeas* without Bail. A Judge would have taken Bail if applied to. The Rule diſcharged. Vide *Stat.* 16 & 17 *Cha.* 2. *c.* 8. 2 *Vent.* 170. *Sikes* on

Demiſe of *Oates* and others againſt *Dawſon. Hil.* 18 *Geo.* 2. *Prime* and *Wynne* for Plaintiff; *Willes* and *Poole* for Defendant.

Furtado *againſt* Miller, one &c. By Bill. Trin. 30 & 31 Geo. 2.

RULE abſolute to quaſh the Writ of *Fi. fa.* returnable on the Morrow of the *Holy Trinity*, (a general Return) inſtead of a Day certain, as it ought to have been without Coſts, and Defendant to bring no Action, *Vide Fulwood*'s Caſe, 3d Report. *Davy* for Defendant; *Prime* for Plaintiff.

Coppendale *againſt* Debonaire.

AFTER a *Fi. fa.* executed, and thereby Part of the Debt and Coſts levied, Plaintiff before the Return of ſaid *Fi. fa.* irregularly ſued out a *Teſtat. Fi. fa.* and under it levied the Reſidue, Rule abſolute to ſet aſide the *Teſtat. Fi. fa.* and for Reſtitution and Coſts. By conſent Defendant to bring no Action. *Stanyford* for Defendant; *Hewitt* for Plaintiff.

Blayer *againſt* Baldwin. Trin. 31 Geo. 2.

DEfendant having been arreſted by a *Ca. ſa.* on an old Judgment obtained in *Trinity* Term 1756, without any Revival of the Judgment, applied to the Court, and obtained a Rule to ſhew Cauſe why the *Ca. ſa.* ſhould not be ſet aſide as irregular, on ſhewing Cauſe Plaintiff produced a Roll whereon Continuances were entred of a *Fi. fa.* ſued out within the Year, *viz.* in *April* 1757, by *Vicecomes non miſit Breve*, and *Ca. ſa.* awarded thereon; but the firſt *Fi. fa.* nor any other appearing to be returned by the Sheriff, the Continuances entred as aforeſaid were deemed inſufficient to ſupport the *Ca. ſa.* on this old Judgment not revived by *Sci. fa.* and the Rule was made abſolute to ſet aſide the *Ca. ſa.* and for a *Superſedeas* to diſcharge Defendant with Coſts. *Poole* for Defendant; *Prime* and *Davy* for Plaintiff.

Staple *againſt* Bird. Trin. 32 & 33 Geo. 2.

DEfendant being arreſted by a *Capias ad ſatisfaciend.* 7th *May* 1759, paid to the Sheriff of *Kent*'s Bailiff, 30*l.* 6*s.* 6*d.* the Sum mentioned in the Writ, which Sum the Bailiff immediately ſent to the Under Sheriff in *London*, on 10th of ſame *May*, Mr. *Elihu Brideoak* Plaintiff's Attorney, (to whom the Judgment whereon ſaid *Ca. ſa.* was iſſued had been aſſigned by Plaintiff) demanded ſaid Money of the Under Sheriff, who excuſed himſelf, the *Ca. ſa.* not being then returnable. At the Return the Sheriff returned, that he took Defendant who paid into his Hands ſaid 30*l.* 6*s.* 6*d.* and that afterwards, and before the Return, to wit, 11th ſame *May*, a *Fi. ſa.* againſt the Goods of *Staple*, the Plaintiff in the *Ca. ſa.* ats. *Bird* Executor, *&c.* the Defendant in the *Ca. ſa.* for 29*l.* 10*s.* was delivered to the Sheriff, and that he levied the ſame out of the Money in his Hands, which with Poundage exceeds the Money received under the *Ca. ſa.* Upon this Return, and an Affidavit of the Fact, *Brideoak* applied to the Court, and obtained a Rule for the Sheriff to ſhew Cauſe why he ſhould not pay him ſaid 30*l.* 6*s.* 6*d.* deducting Poundage, which Rule was made abſolute upon hearing Counſel on both Sides. *Nares* for *Brideoak*; *Wynne* for *Buffar*, Eſq; Sheriff of *Kent*.

Fine.

Harneis *againſt* Micklethwaite and his Wife. Mich. 6 Geo. 2.

THE Fine was ſtopped at the King's Silver Office by *Caveat* entered by Order of Mr. Juſtice *Price*, upon an Affidavit of the Death of the married Woman, one of the Cognizors, and Application was made to the Court that the Fine might paſs, notwithſtanding ſuch *Caveat*. It appeared that the Wife died the Day after the Caption, and after the *Teſte*, but before the Return of the Writ of Covenant. It was inſiſted that the King's Silver was not paid before the Death of the Wife, and therefore the Fine ought not to paſs. On the other Side it was urged, that Fines are common Aſſurances, and the Acknowledgment makes the Fine compleat, that the King's Silver is the Fine *pro licentia alienandi*, which is the Pre-fine paid at the Alienation-Office, and for which a Receipt was indorſed on the Writ of Covenant, and is not Part of the Poſt-fine, which is never collected till after the Fine be compleated; and the Court after Conſideration were of that Opinion, and ordered the Fine to paſs.

Contra post 218. 220.

see Hob. 330.

Cotton *and* Tyrrell, Bar. Quer'; and Baylie *and* Ryder, Deforc'.

THE Fine was ſtopped at the King's Silver Office for want of an Affidavit that the Parties were living, a Year having lapſed ſince the Caption thereof; and *Ryder*, one of the Conuzors, being dead, Application was made to the Judges in the Treaſury that he might be ſtruck out, and that the Fine might paſs as to *Baylie*, the other Conuzor. The Judges denied that Motion, but made a Rule that *Baylie*, the ſurviving Conuzor, ſhould ſhew Cauſe why the Fine ſhould not paſs (generally as to all Parties); and upon Affidavit of Service the Rule was made abſolute.

Between Gregory, Conuzee, *and* Croucher and others, Conuzors. Mich. 7 Geo. 2.

A Fine between the ſaid Parties was ſtopped at the King's Silver Office for want of the uſual Affidavit, a Year being lapſed ſince the Date of the Caption. The Court upon inſpecting the Writ of Covenant and Conuzance made a Rule upon the Clerk of the King's Silver Office, to ſhew Cauſe why the Fine ſhould not paſs; and upon hearing Counſel for the Conuzee and the Clerk of the ſaid Office, and it appearing that all the Parties were alive at the Time when the King's Silver was paid, the Fine was ordered to paſs. It was ſaid *per Cur'*, That all the Affidavits which ought to be required at the King's Silver Office ſhould be, that the Parties were alive at the Time the King's Silver was paid, which is the Pre-fine.

see contra post. 218.

Dean *and* Tidmarſh. Eaſter 8 Geo. 2.

A Fine acknowledged in *South Carolina* ſworn to before the Chief Juſtice, there to be duly acknowledged and atteſted by a Notary Publick. By Judges in the Treaſury, It cannot paſs without Oath of the due Acknowledgment before one of the Juſtices of this Court.

Forſter *againſt* Pollington and Wife, and others. The ſame and another *againſt* Brooke and Wife.

TWO Fines of Lands in the Iſland of *Antegoa* were ordered to be amended upon hearing Counſel for the Conuzee and the Heirs at Law of the Conuzors, who had brought Writs of Error to reverſe the Fines; the Lands were deſcribed in the Writs, *&c. in Inſula de Antegoa in America in Partibus tranſmarinis, viz. in Parochia* Sanctæ Mariæ Iſlington *in Com'* Midd'. The Amendment was by ſtriking out the Words *in America in Partibus tranſmarinis.* Articles of Agreement between the Parties to the Fines to convey and aſſure Lands in the Iſland of *Antegoa* were read; and *per Cur'* the Repugnancy inſerted meerly through want of Skill, and which would vitiate the Fines, muſt be rejected, and the Fines made effectual, that is, in common Form; if they be then inſufficient, Advantage may be taken thereof. *Chapple* for the Conuzee; *Eyre* and *Wright* for the Heirs at Law.

Lazenby *and* Knight.

THE Chirographer refuſed to make out the Indentures of this Fine which was double, a Fine *ſur Cognizance de Droit come ceo, &c.* and a Fine *ſur conceſſit* in one and the ſame Concord; and upon Motion that the Fine might paſs, it was urged by *Wright*, that a Fine is a real Agreement, and ought to be conſidered in the Nature of a Conveyance, and the Party may have it in what Manner he pleaſes at his Peril; but *per Cur'*, this Sort of double Fine is unprecedented. If the Plaintiff will be ſatisfied to let that Part of the Fine which is *ſur conceſſit* be ſtruck out, and that the Fine do paſs as a Fine *ſur Cognizance de Droit come* *ceo*, *&c.* only, he ſhall have a Rule for that Purpoſe; to which *Wright* agreed.

Lombe *againſt* Lombe. Trinity 14 & 15 Geo. 2.

INFANT Truſtees, by Order of the Court of *Chancery*, were to convey by Fine. *Birch* moved, that the Fine might be ordered to paſs, notwithſtanding the Infancy of the Truſtees, who were Daughters of the late Sir *Thomas Lombe*, and one of them the Wife of Sir *Robert Clifton*. The Order in *Chancery* being read, and the Parcels compared, the Motion was granted. *Scrope* verſus *Dom. Fitzwilliam & Ux.* *Hilary* 6 *Geo.* (a Caſe in Point) was quoted.

Heathcock, Baronet, *againſt* Hanbury, Eſquire, and his Wife. Mich. 24 Geo. 2.

TWO Fines of Lands in *Northamptonſhire* and *Rutlandſhire*, taken at *Hamburgh* in Foreign Parts, where the Cogniſors reſided, were ordered to paſs by all the four Judges, upon an Affidavit of a Commiſſioner of the due Execution of each Fine, ſworn before a Clerk in *Chancery* of the City of *Hamburgh*, and authenticated by his Certificate or Atteſtation as a Notary Publick.

Say and Smith and others. Trin. 27 & 28 Geo. 2.

FINE taken before *Prentice* an Attorney, and *Prentice* a Tradeſman, as Commiſſioners. *Prentice* the Attorney died without making Affidavit of the due Acknowledgment of the Fine. One of the Cognizors became a Bankrupt, abſconded, and did not ſurrender within the 42 Days as required *per* Statute. Fine ordered to paſs on Affidavit of the due Acknowledgment by *Prentice* the Tradeſman; (notwithſtanding the general Rule requiring ſuch Affidavits to be made by Attornies.) *Prime* for a Mortgagee for whoſe Security the Fine was taken.

Barber *Plaintiff*; Henry Nunn and Mary his Wife and others *Deforciants*. Eaſter 28 Geo. 2.

THIS Fine was taken 13th *May* 1754, by *Dedimus poteſtatem*, Writ of Covenant teſted 1ſt Day of *Eaſter* Term 1754, returnable from the Day of *Eaſter* in five Weeks (19 *May*,) 'twas compounded and the Prefine paid between the 17th and 20th *May*, and after paſſing the Return, Warrant of Attorney, and *Cuſtos Brevium* Offices, was brought to the King's Silver Office 11th *June*, and the Clerk there then entred the King's Silver or Poſt-Fine in his Book, and on the Writ of Covenant; *Mary Nunn* the Cognizor died 27th *May*. A Caveat to prevent the compleating of this Fine was brought to the King's Silver Office 13th *June* (before the Record made up in Form) on behalf of *John Nunn* eldeſt Son and Heir of the Cognizors. Rule to ſhew Cauſe why that Caveat ſhould not be withdrawn made abſolute. The Court utterly exploded the Notion which prevailed (undoubtedly by Miſtake) in *Harneis* and *Micklethwaite* and his Wife, *Mich.* 6 *Geo.* 2. and *Gregory* againſt *Croucher* and others, *Mich.* 7 *Geo.* 2. *(viz.)* that the King's Silver is the Pre-fine or Fine for Licence to alienate; certainly 'tis not; the King's Silver is the Poſt-Fine, or Fine for Licence to accord. 2 *Inſt.* 511-12. *Dyer* 246. The Return of the Writ of Covenant is agreed to be in the Life-Time of *Mary* the Cognizor; and from that Time the Crown has a Right to the Poſt-Fine, which was entred at the King's Silver Office before any Caveat againſt it; the making up the Record in Form is a miniſterial Act, not neceſſary to be done previous to the Caveat; the Entry by the Clerk of the King's Silver as aforeſaid is ſufficient. 2 *Roll. Abr.* 10. *C.* 12. in Point. *Poole* for Plaintiff; *Prime* for *John Nunn* Son and Heir, *&c.*

Anthony Liſter Gent. *Plaintiff*; John Liſter and Johanna his Wife *Deforcients*. Trin. 28 Geo. 2.

OF a Moiety of Lands, *&c.* in *Yorkſhire*, Fine levied. *Trin.* 27 *&* 28 *Geo.* 2. Complaint was laid before the Court by *Thomas Cuſt* Gent. one of the Co-heirs of *William Staines* Eſquire, deceaſed, ſupported by many Affidavits, ſetting forth, That *Johanna Liſter* one of the Cognizors, Siſter and the other Co-heir of the ſaid *William Staines*, had for ſome Years paſt been diſordered in her Senſes, and was ſo at the Time when this Fine was levied; the Court thereupon, 9 *May* in laſt *Eaſter* Term, made a Rule for ſaid *John Liſter* to ſhew Cauſe why the Fine ſhould not be vacated; and for *John Hancock* Gent. one of the Commiſſioners (who with two others took the Fine by *Dedimus poteſtatem*, and who made Affidavit of its due Acknowledgment, and the Capacity, *&c.* of the Cognizors) to anſwer the Matters in the Affidavits. Upon an Enlargement of the Rule, 31 *May* this Term, at the Inſtance of ſaid *John Liſter* and *Hancock*, the Court recommended it to them to produce ſaid *Johanna Liſter* (who reſided in *Yorkſhire)*; and accordingly 18 *June* after the Affidavits, whereupon the Rule was made, and many Affidavits in Anſwer were read, ſhe was brought into Court, and being examined by the Lord Chief Juſtice, appeared to be a Perſon of good Capacity, and very well to underſtand the Intent of this Fine, and the Deed declaring the Uſes thereof; which was in Favour of her Huſband, with whom ſhe had lived many Years, and upon whom ſhe was deſirous to ſettle her Moiety of her ſaid late Brother's Eſtate, and prevent its deſcending to ſaid *T. C.* her Nephew, and Heir at Law. The Court diſcharged the Rule, with Coſts of the Application to be paid by *Cuſt* to ſaid *John Liſter* and *Hancock*; and alſo Expences of ſaid *Johanna*'s Journey to *Weſtminſter* to be paid by *Cuſt* to ſaid *John Liſter*, which Coſts and Expences were to be taxed and aſcertained by Prothonotary. *Prime*, *Willes*, and *Poole* for *Cuſt*; *Eyre*, *Hewitt*, and *Davy* for *John Liſter* and *Hancock*.

Between Fleetwood Eſquire *Plaintiff*; and Guiſippe Calenda and Wife and others *Deforcients*. 27th February 1756.

[Vacation after Hil. 29 Geo. 2.]

LORD Chief Juſtice, aſſiſted by Mr. Juſtice *Clive*, made an Order, That this Fine ſhould paſs as to ſaid *Calenda* and his Wife, two of the Cognizors, conſidering the particular Circumſtances of the Caſe; notwithſtanding the ſame was not ſigned by them. Captain *Peter Mauger* one of the Commiſſioners attended, and made Oath, That this Fine was duly acknowledged before him and another Commiſſioner, by the ſaid *Calenda* and Wife at

Naples in *Italy*; that theſe Parties were of full Age and good Underſtanding; and that the married Woman was examined apart from her Huſband, and conſented freely. The Fine being taken from theſe Parties beyond Sea, is not within the late Rule requiring an Affidavit, and the Signing of a Fine by the Cognizors is not an eſſential Part. The former Lord Chief Juſtices of this Court have required the Parties acknowledging Fines before them, to ſign Copies on Paper, which have been kept at the Chief Juſtices Chambers as a Check upon the Parties; the Fine on Parchment delivered out and paſſed through the Offices, was not formerly ſigned by the Cognizors, but at the Foot of the Caption by the Chief Juſtice only.

Watts, and Birkett and Wife. Hilary 33 Geo. 2.

ON the Application of *Mary Tiffin*, one of the Perſons intended to be barred by this Fine. A Rule was made for the Cognizors, *&c.* to ſhew Cauſe why further Proceedings to perfect the Fine ſhould not be ſtayed, and former Proceedings vacated. The Fine was taken by two Commiſſioners in *Cumberland*, 19th *March* 1759, by Virtue of a *Ded' Pot'* bearing *Teſte* 8th *November* 1758, *Birkett*'s Wife one of the Cognizors died, 24th *March* 1759. The Writ of Covenant, which is always ſuppoſed to precede the *Ded' Pot'*, was not in Fact ſued out 'till *Trinity* Vacation 1759, it bore *Teſte* 7th *November* 1758, (the Day before the *Teſte* of the *Ded' Pot'*) and was returnable in *July* 1759. The Fine was paſſed through the Offices, and the King's Silver recorded at the King's Silver Office before any Caveat entred there; but it appearing that the Writ of Covenant was ſued out, and returnable after the Woman's Death, the Court upon hearing Counſel in ſupport of the Fine, and againſt it would not in ſo plain a Caſe put the Party to bring a Writ of Error; but made the Rule abſolute. Had the Writ of Covenant been returnable in the Woman's Life Time, and the King's Silver recorded before a Caveat, though after her Death, the Caſe would have been greatly varied; but as it ſtands at preſent 'tis quite out of Doubt. *Comberbach* 57. *Price* againſt *Davis*, and 71. *Fariſley* 2. Dr. *Woodward*'s Caſe. 2d *Inſt*. 511-12. *Cro. Eliz.* 569. *Sheppard*'s *Touchſtone* 4. *Hewitt* and *Nares* for *Mary Tiffin*. *Poole* and *Davy* in ſupport of the Fine. The Statute of Fines, and the ſubſequent Statute giving the *Ded' Pot'*, as alſo the Method of taking

See Hob. 330.

Fines at Bar were taken into Conſideration. The Concord or Agreement is to be made at the Return of the Writ of Covenant; if the Party dies before that Day, there can be no Agreement, all is void.

Habeas Corpus & Procedendo.

Wyatt *againſt* Markham. Trin. 7 & 8 Geo. 2.

MOVED for a *Procedendo* to *Boſton Burough* Court; *Habeas Corpus* to remove the Cauſe being brought after interlocutory Judgment in the inferior Court. *Cur'* thought it too late after Judgment, and made the Rule for *Procedendo* abſolute. *Wright* for Plaintiff; *Baynes* for Defendant. 43 *Eliz. c.* 5. 21 *Jac. c.* 23.

Hewit *againſt* Powell. Mich. 8 Geo. 2.

October 29. DEfendant was brought to the Bar by *Habeas Corpus* returnable in one Month from the Day of St. *Michael*, to be committed to the *Fleet*, and the Court committed him, though the Day of the Return was paſt.

Hornbuckle *againſt* Eaton.

A *Habeas Corpus* to the Town-Court of *Nottingham* was delivered to the proper Officer in open Court on the firſt of *May* laſt, to remove a Plaint from that Court before Trial, notwithſtanding which the Court below went on to Trial. Defendant moved for an Attachment againſt the Sheriff of *Nottingham* for proceeding to Trial after the *Habeas Corpus* delivered as aforeſaid, and a Rule was made to ſhew Cauſe; but upon ſhewing Cauſe, it appearing that Iſſue was joined *April* 27. before the *Habeas Corpus* delivered, the Court below were warranted by the Act of Parliament to proceed. The Rule was diſcharged. *Birch* for Plaintiff; *Chapple* for Defendant.

Lawndy

Lawndy *againſt* Clarke, in Caſe. Mich. 17 Geo. 2.

DEfendant brought a Writ of *Re. fa. lo.* but took no Care to procure it to be returned and filed within two Terms; Plaintiff afterwards obtained a Certificate from the Filazer that the *Re. fa. lo.* was not filed, and thereupon the Curſitor made out a *Procedendo* as uſual, and Plaintiff proceeded to Trial, and had a Verdict in the Court below. Defendant inſiſted, that the Certificate ought to have been from the Prothonotary, and not the Filazer. In Replevin the *Re. fa. lo.* is filed by the Filazer, but in all other Actions by the Prothonotary; and ſo the Officers reported, and the Court held the Practice to be. The Rule to ſet aſide the *Procedendo* was diſcharged, the Application being too late. Rule to ſhew Cauſe why *Re. fa. lo.* ſhould not be taken off the File, enlarged, but never finally determined. *Draper* for Defendant; *Barnardiſton* for Plaintiff.

Burdus *againſt* Shorter and Satchwell. Mich. 17 Geo. 2.

PLaintiff moved for a *Ha. cor.* to bring two Priſoners in the *Fleet*, both charged in Execution, to the Sittings at *Guildhall*, to teſtify in this Cauſe, upon an Affidavit of their being material Witneſſes; and a Rule was made to ſhew Cauſe why ſuch *Ha. cor.* ſhould not be granted; or why the Witneſſes ſhould not be examined upon Interrogatories, and their Depoſitions read in Evidence at the Trial; and afterwards enlarged to ſhew Cauſe as before, (Plaintiff indempnifying the Warden); but for Want of the Conſent of Defendants and the Warden, the Rule was diſcharged. Sometimes ſuch Writs of *Ha. cor.* have been granted. The ſingle Point of Law is, Whether, under ſuch *Ha. cor.* (the Priſoners being in Execution) the Warden could not defend himſelf againſt an Action for an Eſcape? The laſt Time this Queſtion was before all the Judges, ſeven againſt five were of Opinion, that the *Ha. cor.* would not excuſe the Warden, but he would be liable to anſwer for an Eſcape. *Stiles*'s *Practical Regiſter* 160, 283. *Lord Raymond* 851. granted *ad teſtificand. apud le Old Baily pro Rege*, without Affidavit, *Paſch.* 11 *Ann.* 3 *Keble* 51. The King *againſt* Huggins, at the *Old Baily*, granted *ad teſtificand. pro Rege*, Geo. 2. *Willes* for Plaintiff; *Skinner* for Defendant.

Pettit and others *againſt* Molloy. Mich. 19 Geo. 2.

HA. cor. ad ſatisfaciend. in this Cauſe only, three Judgment-Rolls produced in this and two other Cauſes, by Attorney for Plaintiffs, who deſired that Defendant might be charged in Execution in all three. By the Judges in the Treaſury, Defendant can only be charged in that Cauſe wherein the *Ha. cor.* is brought. There muſt be an *Ha. cor.* on every Judgment.

Francia *againſt* Lumbroza de Mattos and his Wife.

ON an Affidavit that *Mordecai Dalmeida*, a Priſoner in the *Fleet* charged in Execution, was a material Witneſs, Defendant moved for an *Ha. cor. ad teſtificand.* to bring him before Lord Chief Juſtice at the Sitting after Term. The Court declared it to be a very doubtful Point, whether ſuch an *Ha. cor.* would be a Juſtification for the Warden in an Action of Eſcape; and therefore did not grant the Writ, but by Conſent a Rule was made, that the Depoſitions of the ſaid *Mordecai Dalmeida*, taken in *Chancery*, be read in Evidence on the Trial at Law. *Skinner* for Defendant; *Willes* for Plaintiff.

Ex parte Martin. Eaſter 25 Geo. 2.

SAmuel Martin, brought into Court by *Ha. cor.* directed to the Sheriff of *Glouceſterſhire*, prayed to be committed to the *Fleet*, with the Cauſes mentioned in the Return, which were, firſt, a Detainer for Want of Sureties, by a Warrant from a Juſtice of Peace, on an Indictment for leaving a Baſtard Child, whereby a Pariſh became chargeable with it's Maintenance. Secondly, an *Excommunicato capiendo* iſſued out of *Chancery*, returnable in the *King's Bench*. And thirdly, with *Exchequer* Proceſs on a Recognizance forfeited at the Seſſions. The Court remanded the Priſoner, being of Opinion, that as to the two firſt Cauſes of Detainer, they had no Juriſdiction. As to the third, the Court inclined to think, that as it was not an Extent, Defendant might have been committed therewith, abſtractedly conſidered.

Imparlance.

Threlkeld *againſt* Goodfellow.

DEfendant cannot plead in Abatement after a General Imparlance without obtaining a Special Imparlance precedent to the Time of Pleading, which muſt be within the four Days given by the Rule to plead.

Bond, and others, *againſt* Jope. Trin. 6 & 7 Geo. 2.

DEclaration was delivered againſt Defendant, a Priſoner, on the laſt Day ſave one of *Eaſter* Term. A Queſtion did ariſe, Whether Defendant ſhould have an Imparlance till *Craſ. Trin.* or muſt plead two Days before the Eſſoin-Day of *Trinity* Term? Upon looking into the old Rule touching the Delivery of Declarations to Priſoners by the Judges in the Treaſury, they were of Opinion that Defendant muſt plead two Days before the Eſſoin-Day according to that Rule.

Sibſon *againſt* Nivin. Hil. 10 Geo. 2.

THIS was an Action for defamatory Words, importing that Plaintiff was guilty of the Murder of *A. B.* Defendant moved for an Imparlance till next Term, on Affidavit that a Proſecution was now carrying on againſt Plaintiff for this Murder (committed on the High Seas) in the Court of Admiralty, and he would probably be tried for the Fact before next Term. A Rule was made to ſhew Cauſe, which was made abſolute. Imparlances are in the Diſcretion of the Court, and it may be of ill Conſequence to enter into Evidence concerning this Murder in the Action for Words before the Trial for the Fact. *Burnett* for Defendant; *Wright* for Plaintiff.

Fitzwilliams *againſt* The Biſhop of Hereford and the Univerſity of Cambridge, in Quare Impedit. Trin. 13 & 14 Geo. 2.

*H*Ayward for Defendants moved for an Imparlance, the Declaration having been delivered after the Eſſoign Day, (*viz.* 4 *June*) *Draper* for Plaintiff produced a peremptory Rule to plead, after which there can be no Imparlance. The Rule to ſhew Cauſe was diſcharged; but the Court gave Defendants a Month's Time to plead.

againſt Higham, 12 June, in the Treaſury. Trin. 17 & 18 Geo. 2.

DEfendant appeared to be a Lunatic, by Affidavits of his Wife and Dr. *Monro*, and a Commiſſion of Lunacy was produced under Seal in *Chancery*, *teſte* 7th inſtant. Imparlance ordered, upon hearing the Attornies on both Sides.

Baker *againſt* Barlow and his Wife. Mich. 1º Geo. 2.

THE Writ was returnable the firſt Return of the Term, and Defendants put in Bail in Time, and Plaintiff declared; but the Declaration not having been delivered with Notice to plead, according to the General Rule, *Paſch.* 3 *Geo.* 2. Defendants moved for an Imparlance. *Per Cur':* This Rule has been taken to extend only to Caſes where Plaintiff appears for Defendant, according to the Statute; but ſo long as the Rule ſubſiſts, in plain and expreſs Words requiring all Declarations on Proceſs returnable the firſt or ſecond Return of any Term, to be delivered with Notice to plead, no Conſtruction can be put upon it, contrary to the Letter, and an Imparlance cannot be denied. Rule abſolute for Imparlance. *Urlin* for Defendants; *Skinner* for Plaintiff.

Cam *againſt* Gardner. Hil. 19 Geo. 2.

WRIT returnable the firſt Return of this Term, in a Bailable Action, Declaration left in the Office without Notice to plead indorſed, but Notice of Declaration and to plead ſerved on Defendant. Defendant moved in the Treaſury for an Imparlance, for Want of Notice indorſed; which was denied, the Notice ſerved on Defendant is ſufficient within the Rule 3 *Geo.* 2.

Turner *againſt* Pigg.

WRIT returnable the firſt Return of this Term, Declaration delivered without Notice to plead indorſed; a Summons taken out for an Imparlance, afterwards Notice to plead given in Time, before the laſt four Days of the Term; held good Notice, and Imparlance denied in the Treaſury, on hearing the Attornies on both Sides.

Note; A Rule to plead muſt be given ſubſequent to the Notice.

Swinley *againſt* Woodhouſe. Mich. 21 Geo. 2.

AFTER the Judgment ſet aſide by Rule of Court, Plaintiff's Agent applied to Defendant's Agent, and deſired Leave to indorſe Notice to plead on the Declaration delivered; which being denied, Plaintiff's Agent gave Notice to plead in Writing. Defendant applied for an Imparlance for Want of Notice to plead indorſed on the Declaration; which was granted. *Vide* General Rules, *Mich. primo, Mich. 3tio & Paſch. 3tio Geo.* 2. as to the Delivery of Declarations with Notice to plead; and *Baker* againſt *Barlow & Ux. Mich.* 18 *Geo.* 2. *Prime* for Defendant; *Skinner* for Plaintiff.

Cracroft, one, &c. *againſt* Willoughby, one, &c. Hil. 22 Geo. 2.

PLaintiff recovered Judgment by Bill, *Hil.* 19 *Geo.* 2. and in *Trinity* Term laſt (after a Writ of Error brought) had Leave of the Court to file a Bill to warrant the Proceedings of *Mich.* 19 *Geo.* 2. and this Bill, with Minutes of an Imparlance ſubſcribed, was certified by the *Cuſtos Brevium* into the Court of *King's Bench*; which being a nugatory Act, that Court would take no Notice of it. Afterwards Plaintiff, (Defendant in Error) alledged Diminution, and by *Certiorari* carried up to the *King's Bench* a Record of the Imparlance. Defendant (Plaintiff in Error) now moved to ſtrike the Imparlance off the Roll. But the Court held, That by Virtue of the Rule for Leave to file a Bill of *Mich.* 19 *Geo.* 2. to warrant the Proceedings, Plaintiff might, as a neceſſary Conſequence, enter the Imparlance on the Roll. Rule by Conſent, to refer to Prothonotary to tax Defendant's Coſts, occaſioned by Plaintiff's not entering Imparlance on the Roll in Time, and Coſts of Application. Defendant to bring Damages, and Coſts recovered, into Court; Coſts to be taxed as above, to be deducted, and Reſidue paid Plaintiff; Satisfaction on Record to be acknowledged at Defendant's Expence. *Agar* and *Bootle* for Plaintiff; *Draper* for Defendant.

Gaſcoigne and his Wife *againſt* Brown. Trinity 24 Geo. 2.

DEfendant having been ſerved with Proceſs returnable the firſt Return of this Term, Plaintiff on the firſt Day of the Term left a Declaration in the Office *de bene eſſe*, and cauſed Notice thereof to be perſonally ſerved on Defendant the ſame Day; but Notice to plead not being indorſed on the Declaration left in the Office, the Queſtion was, Whether ſuch Indorſement was neceſſary, or not? And the Court, on looking into the General Rules *Mich.* 1ſt, *Mich.* 3d and *Eaſter* 3 *Geo.* 2. held, That in this Cauſe it was not neceſſary to indorſe Notice to plead on the Declaration, the Notice ſerved on Defendant is ſufficient; it was the original Courſe. After the Rule of *Mich.* 1ſt, to eſtabliſh the Practice, under the Statute to prevent frivolous and vexatious Arreſts, (directing how Notice is to be ſerved on Defendant where Plaintiff appears for him) Defendant was intitled to imparl, till the Rule of *Mich.* 3d took away the Imparlance. The Rule of *Eaſter* 3d directs nothing about the Notice, only that Declaration ſhall be delivered with Notice. The Declaration is not compleat till Notice; it is a Declaration only from the Time of Notice, which is the ſingle Thing material. Rule to ſhew Cauſe why Imparlance, diſcharged. Two Caſes in the Treaſury had been determined, agreeable to the preſent Rule, before the Caſe in Court. *Swinley* againſt *Woodhouſe*, *Mich.* 21 *Geo.* 2. for Plaintiff; for Defendant.

Inquiry.

Townſhend *againſt* Pool. Mich. 7 Geo. 2.

THIS was an Action of Covenant, and three Breaches were aſſigned, one whereof was confeſſed, and the other two controverted, and a *Venire facias* was awarded to try the Iſſues joined between the Parties, and to aſſeſs the Plaintiff's Damages; as to the Breach confeſſed, upon the Trial, Plaintiff obtained a Verdict; but Damages were neglected to be aſſeſſed as to the Breach confeſſed, which was for Nonpayment of Rent. *Chapple* and *Skinner* moved for a Writ of Inquiry to aſſeſs the Damages upon the Breach confeſſed. The Court granted a Rule *Niſi*, which was afterwards made abſolute.

Pinock *againſt* Willett, Adminiſtrator.

ACTION upon the Caſe for Goods ſold and delivered. Upon the Execution of the Writ of Inquiry, Jury allowed Plaintiff 6 *l.* 5 *s.* Intereſt for the Balance of the Account due to him. Defendant moved to ſet aſide the Inquiſition; and Court were of Opinion that Intereſt could not be allowed in any Caſe, except upon Promiſſory Notes and Bills of Exchange, and that the Inquiſition ought to be ſet aſide. But by Conſent the 6 *l.* 5 *s.*

Part of the Damages, were ordered to be remitted by Plaintiff, to ſave the Expence of a new Inquiry. *Belfield* for Plaintiff; *Chapple* for Defendant.

Pryor *againſt* the Earl of Iſlay, Executor of the Earl of Suffolk. Hil. 7 Geo. 2.

THIS was an Action upon the Caſe on a Promiſſory Note, to which Defendant, with Leave of the Court, had pleaded doubly, *viz. Non aſſ. & Non aſſ. infra ſex annos.* Plaintiff took Iſſue upon the *Non. aſſ.* and replied an Original as to the *Non. aſſ. infra ſex annos*; and thereupon Iſſue was joined upon *Nul tiel Record*. Plaintiff upon the laſt Iſſue obtained Judgment; and thereupon proceeded to execute a Writ of Inquiry of Damages without Trial of the firſt Iſſue. Defendant moved to ſet aſide the Writ of Inquiry; and the Court, upon hearing Counſel on both Sides, ordered the Writ of Inquiry and Inquiſition taken thereon to be ſet aſide. *Baynes* for Defendant; *Chapple* and *Comyns* for Plaintiff.

Mac Carty *againſt* Parminter. Trin. 7 & 8 Geo. 2.

PLaintiff obtained Judgment upon arguing a Demurrer in an Action upon the Caſe, and proceeded to execute a Writ of Inquiry without getting Judgment ſigned by the Prothonotary; which the Court held to be irregular, and ſet aſide the Writ of Inquiry. *Birch* for Defendant; *Chapple* for Plaintiff.

Chiſvers *againſt* Lambert *and* Weſtley nuper Vic' Midd'. Mich. 8 Geo. 2.

SKINNER moved for Defendants to ſet aſide the Inquiſition taken before the Coroner upon a Writ of Inquiry for Exceſſiveneſs of Damages, which were 50*l.* This was an Action brought for a falſe Return of a *Reſcous*, whereby the preſent Plaintiff, one *Cripple*, and others, were returned Reſcuors; and it appeared that *Cripple* having brought his Action againſt Defendants for the falſe Return, had recovered 20*l.* Damages. The Court made a Rule; whereupon *Eyre* ſhewed Cauſe, and produced

Affidavits, that Plaintiff, who kept a Tavern at *Twickenham*, was taken up by a Writ of *Reſcous* founded upon the ſaid Return, and carried to *Newgate*, where he was ſometime impriſoned and put to very great Expences; and the Counſel for Defendants attended before the Coroner at the Execution of the Writ of Inquiry. Court diſcharged the Rule.

Burges *againſt* Nightingale. Mich. 10 Geo. 2.

A Writ of Inquiry was executed, and Plaintiff moved to quaſh the Inquiſition, by reaſon of the Smallneſs of Damages; which was denied. *Prime* for Plaintiff; *Wright* for Defendant. Where the Jury find any Damages, the Inquiſition muſt ſtand. *Aliter*, had they found no Damages.

Elmes *againſt* Tomlinſon, Attorney. Mich. 12 Geo. 2.

RULE to ſhew Cauſe why Writ of Inquiry, returnable on a general Return (and not at a Day certain, as it ſhould have been, the Proceeding being by Bill) ſhould not be ſet aſide, diſcharged, becauſe this is Matter of Error, appearing upon the Record, and not of Irregularity; and whether it is helped, or no, by the Statutes of *Jeofails*, is not now the Queſtion. *Bootle* for Defendant; *Draper* for Plaintiff.

Ketle *againſt* Bromſall. Eaſt. 12 Geo. 2.

PLaintiff had given Notice of executing a Writ of Inquiry at *St. Albans, Com' Hertſ'*, and both Parties attended with Counſel and Witneſſes on *May 2: 1739*. But when the Under-Sheriff was about to execute the Writ, he perceived it to be returnable laſt Term, and would not proceed. Defendant moved for Coſts upon Affidavit of great Expence, and had a Rule to ſhew Cauſe. Upon ſhewing Cauſe it was urged for Plaintiff, that this Court had never yet given Coſts for not proceeding to execute Writs of Inquiry according to Notice. And this is a meer Miſtake, Plaintiff was diſappointed as well as Defendant. *Per Cur'*: Though there has been hitherto no Rule for Coſts in this Court, yet Notices of Inquiry ſtand upon the ſame Reaſon as Notices of Trial, and the Court of *King's Bench* grant Coſts in both Caſes; and were this a common Caſe, Coſts could not be granted; but it appearing that the Inquiry was returnable long before the Day appointed for the Execution thereof, Let the Plaintiff pay Coſts; it is not reaſonable the Defendant ſhould ſuffer by the Miſtake of Plaintiff's Attorney, and let a general Rule be drawn up, that Coſts be paid for the future where Inquiries are not executed purſuant to Notice. *Eyre* for Defendant; *Agar* for Plaintiff.

Bunting *againſt* Teaſdaile. Trin. 13 Geo. 2.

PLaintiff executed a Writ of Inquiry; whereupon the Jury found no Damages; and Plaintiff executed a ſecond Writ of Inquiry without quaſhing the firſt: And on the ſecond the Jury found an Half-penny Damages. Defendant moved to ſet aſide the Execution of the ſecond Writ, and had a Rule to ſhew Cauſe, which Rule was made abſolute; the Court being of Opinion that the ſecond Writ was irregularly iſſued, the firſt pending, and not returned. *Eyre* for Defendant; *Bootle* for Plaintiff.

Wallace *againſt* Humes. Trinity 13 & 14 Geo. 2.

AFTER the Execution of a Writ of Inquiry of Damages, final Judgment ſigned, and Execution executed, Defendant moved in *Eaſter* Term 1740 to ſet the ſame aſide, and for Reſtitution of the Money levied, becauſe the Inquiry was not executed, either before the High Sheriff of *Cambridgeſhire*, (in which County the Action was laid) or his Under-Sheriff, but before one *George Worrall*, an Attorney, who was deſired by Plaintiff's Attorney to act as a Deputy to the Under-Sheriff for this Purpoſe; and a Rule *Niſi* was granted. Upon ſhewing Cauſe in *Trinity* Term 1740, it was alledged on Plaintiff's Behalf, that it was a common Practice, where Under-Sheriffs live at a great Diſtance from the Parties and their Witneſſes, for ſuch Under-Sheriffs to appoint Deputies for the Execution of Writs of Inquiry, in order to ſave Expence to the Parties. And although it appeared that one *White*, who acted as Under-Sheriff for this County, had given an Authority for the Execution of this Inquiry before ſome Attorney in *Wiſbech*, where the Parties lived, and that Plaintiff's Attorney had paid him 13 *s.* 4 *d.* for his Fee; yet the Court ſeemed clear of Opinion, that the Inquiry was improperly executed; for a Deputy could not appoint a Deputy. But it appearing, that the Defendant had made a Defence upon the Inquiry; and in Regard that only 9 *s.* Damages were found by the Jury, the Court thought it would be doing Defendant more Service to let the Inquiry, *&c.* ſtand, than to ſet them aſide; therefore they diſcharged the Rule, but declared, that in order to put a Stop to this Practice of Under-Sheriffs making Deputies, they would grant an Attachment againſt any one that ſhould do it for the future. *Prime* for Plaintiff; *Skinner* for Defendant.

Davis *againſt* Skyllins. Eaſter 14 Geo. 2.

RULE to ſhew Cauſe why Inquiry and Inquiſition ſhould not be ſet aſide, as executed before a Perſon deputed by the Under-Sheriff, and acting without proper Authority. It appeared, on ſhewing Cauſe, that the Inquiry was executed before a Deputy appointed by a Deputation under the Seal of the Sheriff's Office, and the Rule was diſcharged, with Coſts. *Bootle* for Plaintiff; *Gapper* for Defendant.

Langley *againſt* Bothwright, an Attorney. Mich. 15 Geo. 2.

AFTER an Interlocutory Judgment, Plaintiff ſued out a Writ of Inquiry of Damages, and before the Return thereof, altered the ſame, cauſed it to be reſealed, and afterwards proceeded to the Execution thereof, according to regular Notice. Defendant moved to ſet aſide the Inquiry, by Reaſon of this Alteration, and obtained a Rule to ſhew Cauſe; which was diſcharged, the Court being of Opinion, that as the Writ of Inquiry had not been made Uſe of before the Alteration, the Plaintiff had done nothing irregular; and the Complaint being groundleſs, and containing ſome Scandal, the Court gave Plaintiff his Coſts. *Willes* for Defendant; *Prime* and *Bootle* for Plaintiff.

Yate *againſt* Swaine, for Falſe Impriſonment.

A Rule was obtained to ſhew Cauſe why the Writ of Inquiry of Damages, and Inquiſition thereon, ſhould not be ſet aſide. Two Objections were made; one, that the Notice was ſerved upon the Defendant himſelf, and not his Attorney; and the other, that the Time appointed by the Notice for executing the Writ of Inquiry was between the Hours of ten and five. It was admitted, for Plaintiff, that both Objections were good; but it was inſiſted, that both of them were cured, by one *Ruſſel* an Attorney's attending at the Execution of the Writ of Inquiry, on the Part of Defendant, croſs-examining Plaintiff's Witneſſes, and producing a Witneſs for Defendant. The Damages were 250*l*. No Special Damages being laid, and it appearing that Plaintiff was confined for no longer Time than 26 Days, and Plaintiff himſelf making no Affidavit about the Damages or Impriſonment, the Court thought the Damages exceſſive, and ordered the Inquiry to be ſet aſide, upon Payment of Coſts, and a new Writ of Inquiry to be executed before a Judge at next Aſſizes. *Willes* and *Wynne* for Defendant; *Skinner* and *Birch* for Plaintiff.

Billers, Knight, and another, *againſt* Bowles. Hilary 18 Geo. 2.

RULE to ſhew Cauſe why Inquiſition taken on Writ of Inquiry of Damages, made abſolute; no Evidence of Plaintiff's Demand having been given to the Sheriff and Jury. Plaintiff urged, that the Demand was by Promiſory Note indorſed ſet forth in the Declaration, which was admitted by not pleading, and the Damages found were only the Amount of Principal and Intereſt due on ſuch Note. But the Court held, That the Note indorſed ought to have been produced, and the Note and Indorſement proved. *Agar* for Defendant; *Urlin* for Plaintiff.

Penrice, Widow, *againſt* Penrice, by Writ of Dower *unde nihil habet*. Trinity 18 & 19 Geo. 2.

ON the Execution of a Writ of Inquiry, the Jury found for Damages the Value of a Third Part of the Land, from the Time of the Huſband's Death to the Day of the Inquiſition, without any Deduction for Reprizes, *viz.* Land-Tax, Repairs and Chief-Rent, and for Coſts, the Jury gave the Amount of the Attorney's Bill for the Demandant, upon his Evidence that the ſame was a reaſonable Charge, and he expected it from his Client. Damages are given by the Statute of *Merton*, Coſts by the Statute of *Glouceſter*. The Court thought, that the Value of the Third Part of the Profits run ſince the Death of the Huſband, ſhould have been computed only to the Time of awarding the Writ of Inquiry, and not to the Day of the Inquiſition. That an Allowance ought to have been made for Reprizes; the Words of the Writ are *(ultra Repriſas)*; and that the Attorney's Bill, to his Client the Demandant, ought not to have been the Meaſure of Coſts. The Inquiſition was ſet aſide, and a new Writ of Inquiry ordered to be executed before a Judge at next Aſſizes, on Payment of Coſts. *Skinner* for Tenant; *Birch* and *Wynne* for Demandant.

See contra 1. Leon. 56.

Quære, Whether the Jury ſhould not have given Common Coſts, One Shilling, as uſual, and the reſt be taxed and allowed *de incremento per* Prothonotary? But this was not before the Court.

Ellis *againſt* Wall. Trinity 19 & 20 Geo. 2.

INquiſition taken on a Writ of Inquiry of Damages ſet aſide, for Want of Plaintiff's proving a Promiſory Note ſet forth in the Declaration. Plaintiff's Attorney inſiſted, before the Sheriff and Jury, that the Note was admitted by Defendant's ſuffering Judgment, and the Jury found the Sum mentioned in the Note for Damages, without any Proof; which was held unwarrantable. *Agar* for Defendant; *Willes* for Plaintiff.

Sparrow *againſt* Reed, Eſquire, for Damage done to Common-Right Trin. 25 & 26 Geo. 2.

RULE made abſolute for the Execution of Writ of Inquiry of Damages before a Judge at next Aſſizes, though no Affidavit was produced to ſupport the Rule. Juries are returned in a much better Manner at the Aſſizes, than uſually, for Writs of Enquiry. An improper Deputy is often appointed to repreſent the Sheriff, ſometimes Plaintiff's Attorney. Summary Juriſdictions are not to be encouraged. Defendant is in the Rank of Eſquire; he deſires that the Writ may be executed in the Preſence of a Judge; the extraordinary Coſts whereof are like to fall on himſelf. *Willes* for Defendant; *Prime* for Plaintiff.

Inſpection of Court-Rolls and Books.

Richards, Qui tam, &c. *againſt* Pattinſon. Trinity 10 Geo. 2.

THIS was an Action brought upon the Statute 9 *Annæ*, againſt Defendant, Deputy Poſt-Maſter of *Carliſle*, for the Penalty of 500*l.* for his perſuading a Perſon to vote at the laſt Election of Members to ſerve in Parliament. Defendant moved for Inſpection of the Corporation Books. *Per Cur'*: Defendant is laid to be an Elector, and having a Right to vote, he is intitled to inſpect the Books by the Act of Parliament: To this Purpoſe the Books are publick, and therefore let Defendant have the Inſpection of that Part of the Corporation-Books where the Names of the Freemen are inrolled, and Copies at his own Expence. *Eyre* and *Bootle* for Defendant; *Chapple* and *Wright* for Plaintiff.

Smith *againſt* Huggins. Trinity 11 & 12 Geo. 2.

DEfendant moved for Leave to inſpect the Books of the Conic Lamp-Office, and had a Rule to ſhew Cauſe, which was diſcharged. *Per Cur'* : The Proprietors of theſe Lamps are not a Corporation, their Books are not publick, nor do they appear to be Truſtees for Defendant. *Wright* for Defendant; *Eyre* for Plaintiff.

The Brewers Company *againſt* Benſon. Eaſter 19 Geo. 2.

ACTION brought on By-Laws againſt Defendant, exerciſing the Trade of a Brewer, but no Member of the Company. By-Laws affecting Strangers intereſt them therein. Rule abſolute for Defendant to inſpect the Company's Books, and take Copies. *Skinner* for Defendant; *Willes* for Plaintiff.

Roe *againſt* Aylmar and others, on the Demiſe of Hare, Bart. in Ejectment. Hil. 27 Geo. 2.

THIS Ejectment was brought on the Demiſe of the Lord of a Manor, againſt the Defendant his Tenant, to recover Poſſeſſion of a Copyhold Eſtate, which the Lord inſiſted was forfeited, by Reaſon of the Tenant's not rebuilding a Cottage. Defendant moved for Leave to inſpect and take Copies, at his own Expence, of the Court-Rolls of the Manor; but the Motion was denied, for Want of an Affidavit that a previous Application had been made on Defendant's Part, to the Lord or his Steward, for an Inſpection and Copies, which were denied. Though this is a Diſpute meerly between the Lord and his Copyhold Tenant touching a Forfeiture, yet the ſame previous Application is neceſſary as in other Caſes. The Tenants of a Manor are the only Perſons who have a Right to inſpect the Court-Rolls. The Court always expect an Affidavit to ſhew that the Perſon, on whoſe Behalf the Motion is made, is a Tenant of the Manor, and has applied and been denied, as above-mentioned. *Draper* for Defendant; *Prime* for Leſſor of Plaintiff.

Hobſon

Hobſon Eſquire *againſt* Parker Eſquire and others, in Treſpaſs. Hil. 29 Geo. 2.

DEfendant *Parker* ſet up a preſcriptive Right to Common from *Lammas* to *Candlemas* on the *Locus in quo*, whereon Iſſue was joined before, but not tried at laſt Aſſizes. Plaintiff appeared to be a Freeholder, and Defendant *Parker* to be a Freeholder's Tenant, within Lord *Dartmouth*'s Manor of *Lewiſham*; Defendant *Parker* moved for Leave to inſpect the Court Rolls as to the Uſage and Cuſtom of Common Right. On ſhewing Cauſe by Defendant and the Lord of the Manor, it was urged, That though the Tenants of Copyhold or Cuſtomary Manors have a Right to inſpect Court Rolls, which contain their Titles; yet as this is a Freehold Manor, and the Court not in Nature of a Court of Record as a Copyhold, but a common Court Baron, and the Rolls the Lord's private Property; the Freeholders within the Manor are not entitled to inſpect the Rolls, which are the Lord's Title; eſpecially as there's nothing in the Pleadings about the Cuſtom of the Manor. For Defendant *Parker* it was ſaid, That though a Stranger has not, every Tenant has, a Right to inſpect the Lord's Rolls; That no Title appears on the Rolls of a Court Baron; That a Court Baron can preſent and amerce, though not fine. That the Freeholders are Judges of the Court Baron, and have a Right to ſee its legal Proceedings. Rule abſolute upon Mr. *Pickering*, Lord *Dartmouth*'s Steward, for Leave to inſpect, &c. *ut ſupra*. *Draper* and *Wynne* for Defendant; *Parker*, *Willes*, and *Poole* for Plaintiff and Lord *Dartmouth*.

Baldwyn *againſt* Tudge. Trin. 27 & 28 Geo. 2.

ACTION for an Amerciament at a Court Baron. Rule to ſhew Cauſe, why Defendant a Freehold Tenant ſhould not have Leave to inſpect Court Books, &c. generally, made abſolute as to ſuch Entries only as relate to Amerciaments. *Poole* for Defendant; *Prime* for Plaintiff.

The Mayor, Bailiffs, &c. of Exeter *againſt* Coleman. Hil. 28 Geo. 2.

IN an Action for Petit Cuſtoms upon Hemp, Flax, and other Merchandize, founded on a preſcriptive Right, Defendant moved for Leave to inſpect the Corporation's Table of Rates and Account Books of Sums received; denied. This would be looking into the Plaintiff's Title, Defendant is a Stranger and no Member of the Corporation. *Poole* for Plaintiffs; *Prime* for Defendant.

Judgments.

Theedam *againſt* Jackſon. Mich. 6 Geo. 2.

FOUR Queſtions did ariſe; the firſt, Whether for want of Payment for the Copy of an Indenture ſet out in the Declaration (whereof the Defendant had craved *Oyer)* Plaintiff could ſign Judgment?

The ſecond, Whether Plaintiff having been ſtaid by a Special Injunction out of *Chancery* (whereby he was reſtrained from ſigning Judgment) near twelve Months after Rule to plead given, can, after ſuch Injunction diſſolved, ſign Judgment, without giving a new Rule to plead.

The third, Whether no Appearance being actually entered, *Forreſt* the Defendant's Attorney's undertaking to appear, be ſufficient to ſupport the Judgment?

The fourth, What Time Defendant had to plead after *Oyer* of the ſaid Indenture given? The three firſt Points were determined in Favour of Plaintiff; but upon the fourth, the Court held that Defendant had the ſame Time to plead after the Declaration was verified by *Oyer*, as he had at the Time *Oyer* was demanded; and thereupon the Judgment was ſet aſide, it having been ſigned the next Day after *Oyer* given, and the *Oyer* having been demanded two Days before the Rule for pleading was out.

Martyn, Qui tam, *againſt* Skinner.

THE Defendant's Attorney left a Note at the Houſe of Plaintiff's Attorney on a double Penny Stamp, in this Manner, *(viz.)* I plead *Nil debet.* Yours, *&c.* and the Plaintiff's Attorney, without ſending Notice to Defendant's Attorney, that he expected a Plea in Form, ſigned Judgment; and upon a Motion to ſet the Judgment aſide, it was held to be regular, and the Note aforeſaid to be no Plea. Pleas delivered to Attornies muſt be drawn up in the ſame Manner as to be left in the Office.

Moore *againſt* Hodgſon.

MOTION to ſet aſide Judgment ſigned for not paying for the Iſſue, Plaintiff's Attorney in Town calling on Defendant's Agent there for a Plea. It appeared, upon ſhewing Cauſe, that Defendant had pleaded by his Country Attorney; thereupon the Plaintiff's Attorney in the Country tendered the Iſſue, which Defendant's Attorney refuſed to pay for; and Plaintiff's Attorney ſent to his Agent in Town to ſign Judgment; which was held good, Defendant's Attorney having undertook to be the Agent by pleading in the Country.

Gibſon *againſt* the Biſhop of Bath and Wells, and Bond.

Hil. 6. Geo. 2.

In Quare Impedit. ISSUE was joined between the Parties in *Hil.* 4 *Geo.* 2. and afterwards Judgment was entered at the Foot of the Iſſue for Plaintiff by *Cognovit Actionem (relicta verificatione pl'iti)* by Virtue of a Warrant of Attorney for that Purpoſe, pretended to be executed by Defendant *Bond*, the Validity of which Warrant of Attorney being conteſted, an Iſſue was directed by the Court to try whether the ſame was duly executed by *Bond* or not; and upon Trial the Jury found it to be a Forgery; whereupon the Court ordered the Judgment entered as aforeſaid, by Virtue of ſaid Warrant of Attorney, to be ſet aſide. Defendants moved that ſaid Judgment entered upon Record, ſubſequent to the Iſſue joined, might be ſtruck out of the Roll, in order that Defendants might make up the Record for Trial by Proviſo: The Court denied to make any Rule, but declared that the ſaid Judgment might be vacated in proper Manner, by Virtue of the former Rule for ſetting it aſide; and a *Vacatur hoc Judic'* was accordingly entered on the Margent of the Roll.

Fray *againſt* Smith.

MOtion to arreſt Judgment for a Defect in the Award of the *Venire facias*, which was in *Engliſh*, and followed the old *Latin* Form (Twelve and ſo forth) for *Duodecim, &c.* and ſo on. Upon ſhewing Cauſe, the Court were of Opinion that the *Venire* was awarded well, the Intent of the Parliament being to tranſlate no more into *Engliſh* than was before in *Latin*; but being told the ſame Queſtion was depending in the Court of *King's Bench*, the Court enlarged the Rule 'till next Term.

Scott *againſt* Ferrall, in Covenant, Damages laid 20 *l.*

Eaſter 6 Geo. 2.

PLaintiff, upon the Trial, proved Damages to the Amount of 13*l.* Defendant ſet off a mutual Debt of 5*l.* 4*s.* and Plaintiff obtained a Verdict for 7*l.* 16*s.* The Proceedings were in *Latin*, and the Damages being under 10*l.* the Court had made a Rule to ſtay the Entry of final Judgment, *Quouſq; &c.* which was diſcharged, the Court being of Opinion that the Cauſe of Action muſt be the Plaintiff's Demand, and not the finding of the Jury.

Rivers, and others, *againſt* Plumlee.

A Summons for Time to plead was ſerved upon Mr. *Lyte*, Plaintiff's Attorney, who attended at the Time appointed by the Summons, and ſtaid an Hour; but Mr. *Jones*, Defendant's Attorney, did not attend; whereupon Mr. *Lyte*, Plaintiff's Attorney, ſigned Judgment, which was ſet aſide by the Court as irregular, for want of diſcharging the Summons.

Church *againſt* Jaſon. Trin. 6 & 7 Geo. 2.

ACTION of Debt upon Bond; the *Alias Dict'* was in the Declaration put in *Latin*, as in the Bond. *Chapple* moved in Arreſt of Judgment upon the late Act of Parliament, that all Proceedings at Law ſhould be in *Engliſh*, and obtained a Rule *Niſi*. Afterwards *Eyre* ſhewed Cauſe, and the Court were of Opinion that the *Alias Dict'*, if ſet out at all, muſt be ſet out in the ſame Language as in the Deed, and would otherwiſe be erroneous, and diſcharged the Rule.

Panter *againſt* Coppin.

CORBET moved to ſet aſide the Judgment ſigned for want of a Plea, upon an Affidavit of the Delivery of a Plea to Plaintiff's Attorney in due Time, which was a Plea of an Outlawry againſt Plaintiff, in the *King's Bench* pleaded in Bar; but not *ſub pede Sigilli*. *Chapple* defended the Motion; and inſiſted, that the Outlawry not being pleaded *ſub pede Sigilli*, Plaintiff was not bound to accept it, and therefore might regularly ſign Judgment, cited 1 *Salk*. 217. *Carthew* 220. The Court ordered it to be moved again; and *Corbet*, when the Motion came on the ſecond Time, argued that the Plea being pleaded in Bar, and not as a Dilatory, differs it from the Caſes quoted by *Chapple*. *Corbet* quoted *Coke's Inſt*. 128. 1 *Lutw*. 40. 2 *Mod*. *Atkins* and *Bayle*. *Chapple* replied, That Lord Chief Juſtice *Holt's* Words in *Carthew* and *Salkeld* go both to Pleas in Bar and Abatement, where the Outlawry is in another Court. *Per Cur'*: Sir *W. Willypoles's* Caſe in *Cro. Car*. *Robinſon* 213. 2 *Vent*. 282. quoted. Plea in Bar not dilatory, Plaintiff cannot take upon him to judge of the Plea in Bar, he ſhould apply to the Court, or demur. Rule made to ſet aſide the Judgment.

Farrance *againſt* Brignall, in debito ſuper Obligationem.

BAYNES moved to ſet aſide the Judgment upon an Affidavit of a Demand of *Oyer* of the Bond the 29th of *May* (being the ſame Day whereon a Plea was demanded) and of the Service of Mr. Juſtice *Forteſcue*'s Summons the ſame Day for *Oyer*, and Time to plead. *Darnal* for Plaintiff oppoſed the Motion, and produced an Affidavit that *Oyer* was not demanded, nor Summons ſerved 'till after the Rule for Pleading was out. Court refuſed to make any Rule.

Matthews and Wife, Adminiſtratrix, *againſt* Stone.

THE Writ was returnable in *Hilary* Term, and a Declaration left in the Office the ſame Term; and afterwards an Appearance entered by Plaintiff, according to the Act of Parliament; but no Notice of the Declaration was given 'till the 12th of *April* for Defendant to plead within the firſt four Days of this Term. *Chapple* moved to ſet aſide the Judgment, the Declaration having been left in the Office before the Appearance entered; and a Rule *Niſi* was granted. *Belfield* afterwards ſhewed Cauſe, and Court diſcharged the Rule, the Declaration being a Declaration well delivered only from the Time of the Notice; but Court made another Rule to ſet aſide the Judgment upon Payment of Coſts, pleading an iſſuable Plea, and taking ſhort Notice of Trial.

Morſe, an Attorney, *againſt* Farnham.

THE Attachment of Privilege was returnable on *Friday* next after the Morrow of the *Holy Trinity*, with Notice for Defendant to appear on the 25th of *May*. Appearance was entered by Plaintiff *June* 1, and Judgment afterwards ſigned. Defendant moved to ſet aſide the Judgment, the Appearance being entered by Plaintiff one Day, if not two Days before the Time for Defendant's appearing was expired; and a Rule *Niſi* was granted on *Corbet*'s Motion. *Hawkins* and *Darnal* afterwards ſhewed Cauſe, and inſiſted that the Cauſe of Action was above 10*l.* *(viz.)* 13*l.* and upwards; and therefore this was not a Proceeding upon the laſt Act of Parliament, but upon the Act 12 *Geo.* 1. whereupon Defendant has but four Days to appear. Court were of Opinion, that no Sum being mentioned in the Writ, it ſtands at large, and the Appearance by Plaintiff was irregularly entered; but it appearing that Defendant had afterwards Notice of the Declaration being left in the Office, he ſhould have applied before Judgment, and was too late after Judgment; and therefore the Rule was diſcharged.

Glaſcock *againſt* Martin. Mich. 7 Geo. 2.

THE Iſſue Book was left in the Office, and Notice thereof left under the Chamber-Door of Mr. *Field*, Defendant's Attorney, the ſame Day, by Mr. *Cole*, Plaintiff's Attorney, who could not that Day find *Field*, but next Day found him at his Chambers, and gave him Notice that the Iſſue Book was left in the Office; and demanded the Money due for the ſame, which *Field* refuſed to pay, inſiſting that the Iſſue Book ought to be brought to him; whereupon *Cole* ſigned Judgment. The Court, upon hearing Counſel on both Sides, and the Report of Prothonotaries, *Cooke* and *Thomſon*, held, that Defendants Attornies muſt pay for Iſſue Books at their Peril; and if they are not to be found, Iſſue Books may be left in the Office, and diſcharged the Rule obtained to ſet aſide the Judgment *Niſi*; but let Defendant in, to try the Merits, and ſet aſide the Judgment upon Payment of Coſts, pleading the General Iſſue, and taking ſhort Notice of Trial.

Welland, and Attorney, *againſt* Rock. Mich. 7 Geo. 2.

DEfendant moved to ſtay Proceedings in an Action brought for Fees, no Bill of Fees having been delivered, and obtained a Rule *Niſi*; but upon ſhewing Cauſe, the Court were of Opinion that they could not conſider the Matter as an Irregularity becauſe it is illegal, and againſt an Act of Parliament; but ſet aſide the Judgment and Inquiry upon Payment of Coſts, bringing the Money into Court, pleading the General Iſſue, and taking ſhort Notice of Trial.

Taylor *againſt* Slocomb.

A Rule to plead was given in *Trinity* Term laſt; and Defendant obtained Time, by Mr. Juſtice *Reeve*'s Order, to plead 'till the firſt Day of this Term; and for want of a Plea the

Plaintiff ſigned Judgment of this Term, without giving a new Rule to plead; which Court held to be regular, the Rule to plead given laſt Term being enlarged, by the Judge's Order, to the firſt Day of this Term. *Chapple* for Plaintiff; *Urlin* for Defendant.

Lazenby *againſt* Bradley.

THE Writ was returnable the firſt Return of this Term; whereto Defendant appeared by his Attorney, and Plaintiff declared in *Yorkſhire*, gave a Rule to plead, and after demanding a Plea, ſigned Judgment for want thereof in four Days; Defendant moved to ſet aſide the Judgment: And the Queſtion before the Court was, Whether in this Caſe the Defendant ſhould have four or eight Days to plead? And the Court held, that purſuant to the Rule of Court made in *Michaelmas* Term, the third of his preſent Majeſty, in all Caſes upon Writs returnable the firſt or ſecond Return of any Term, if the Plaintiff doth not declare in *London* or *Middleſex*, or the Defendant lives above twenty Miles from *London*, the Defendant hath eight Days time to plead, and therefore ſet aſide the Judgment.

Robinſon *againſt* Sparrow.

WARD, Plaintiff's Attorney, tendered the Iſſue Book to the Clerk of *Horne*, Defendant's Attorney, and demanded Payment for entring Defendant's Appearance: *Horne*'s Clerk offered to pay the reſt of the Money demanded, but refuſed to pay for entring the Appearance; whereupon *Ward* ſigned Judgment, and Defendant moved to ſet the ſame aſide. *Per Cur'*: Defendants Attornies muſt pay the Money charged upon the Iſſue Book, which Plaintiffs Attornies are to receive at their Peril, and therefore Judgment was held to be regular; but the Merits not having been tried was ſet aſide upon Payment of Coſts, pleading the General Iſſue, and taking ſhort Notice of Trial.

Blaxland, an Attorney, *againſt* Burges, Widow.

DEclaration filed *November* 3, Notice and Rule to plead given the ſame Day. *November* 12, a Releaſe pleaded, with a *Profert in Cur'*, and the ſame Day *Oyer* was demanded by the Plaintiff in Writing. *Nov.* 14, in the Afternoon, Judgment ſigned for want of *Oyer*. Queſtion, Whether Plaintiff could ſign his Judgment, Defendant not having given *Oyer* according to Demand? *Nov.* 26, 1733, Upon this Point all the Judges were of Opinion, that in Caſe Defendant pleads with a *Profert*, and *Oyer* be demanded, and not given in a reaſonable Time, Plaintiff may ſign his Judgment without applying to the Court to ſet aſide the Plea, it being eſteemed as no Plea 'till verified by *Oyer*.

Charleton *againſt* Hankey and another. Hil. 7 Geo. 2.

THE *Capias* was returnable 27th *October* laſt, and Judgment ſigned *November* 7th following. *Chapple* moved to ſet aſide Judgment as ſigned the 12th Day after Return of the Writ, which was one Day too ſoon, Defendant having, by the late Act of Parliament, eight Days to appear after the Return of the Writ, and by the Practice of the Court four Days afterwards to plead: And the Court made a Rule to ſhew Cauſe; whereupon *Darnall* ſhewed for Cauſe, that the Declaration was left in the Office *de bene eſſe* (purſuant to the Rule of Court made in *Michaelmas* Term 3 K. *G.* 2.) on the third *November*, and Notice thereof that Day ſerved on Defendant, and a Rule to plead given the ſame Day; and on 7th *November*, Defendant not having appeared, Plaintiff, upon the uſual Affidavit, entered an Appearance for him; and afterwards, the ſame Day, ſigned Judgment, which the Court held to be regular, and diſcharged the former Rule.

Boſanquet *againſt* Rondeau.

THE Writ was returnable in eight Days of St. *Hilary*, *Jan.* 20, and Declaration filed in the Office *de bene eſſe*, *January* 23, and Notice given Defendant that Day, and a Rule to plead given, which was out on *Saturday* 26th of *January*. On *Monday* Morning 28th, Plaintiff entered Defendant's Appearance, and in the Afternoon ſigned Judgment. The Court, upon hearing Counſel on both Sides, were of Opinion, That by the late Act of Parliament the Defendant hath eight Days to appear after the Return of the Writ, (*viz.*) excluſive of the Return-Day, and therefore ſet aſide the Judgment, the Appearance being entered, and Judgment ſigned one Day too ſoon. *Darnal* for Plaintiff; *Chapple* for Defendant.

Coulſon *againſt* Turnbull and others.

JUdgment was ſigned againſt all the Defendants in a joint Action, though one of them never had Notice either of the Writ or Declaration. *Wynne* and *Wright* moved to ſet aſide the Judgment, and a Rule was made *Niſi*; whereupon *Eyre* ſhewed for Cauſe that a Writ of Inquiry was executed, and therefore the Motion came too late: But *per Cur'*, the Judgment can never be good as to that Defendant who was not ſerved; and therefore the Judgment being joint muſt be ſet aſide as to all.

Amey *and* Garlick. Eaſter 7 Geo. 2.

THIS Action was brought againſt the Defendant as an unmarried Woman: She and her Huſband plead in the following Manner, *to wit*, And *S. H.* and *A.* his Wife, late the ſaid *A. Garlick*, and introduce the Plea with the Marriage, and then ſay that the ſaid *A. Non Aſſumpſit*. Plaintiff ſigned Judgment as if there had been no Plea in the Cauſe, which was ſet aſide upon hearing Counſel on both Sides. *Chapple* for Plaintiff; *Belfield* for Defendant.

Sedgley *againſt* Weſtbrooke. Trin. 7 & 8 Geo. 2.

THIS was an Action of Debt upon a Judgment. Defendant moved to ſtay the Proceedings pending a Writ of Error, which the Court ordered upon giving Judgment in this Action. A Rule of the Court of *King's Bench* was produced, whereby Proceedings were ſtaid without giving Judgment pending the Writ of Error; but *per Cur'*, the Practice is otherwiſe here.

Camp, Qui tam, &c. *againſt* Gale.

DEfendant moved in Arreſt of Judgment the laſt Day of the Term, but had no Affidavit of Notice of the Motion. The Court made the common Rule to ſtay the Entry of final Judgment till Cauſe ſhewn, but declared, that for the future they would never make a Rule to ſtay upon a Motion in Arreſt of Judgment the laſt Day of a Term without Notice. *Chapple* for Defendant.

Smith *againſt* Randall. Mich. 8 Geo. 2.

Upon an Iſſue of Nul tiel Record.

THIS was an Action upon a Bail-Bond. Defendant pleaded *Comperuit ad diem*: Whereupon this Iſſue was joined, and this (*November* 4.) being the Day given for Defendant to bring the Record of the Appearance into Court, he did produce a Record of Bail and Surrender thereupon; but one Perſon only being Bail, it was looked upon as no Bail, and Plaintiff had Judgment. *Hawkins* for Defendant; *Baynes* for Plaintiff.

Paul *againſt* Southouſe.

DEclaration delivered at the Houſe of Defendant's Attorney between 11 and 12 o'Clock at Night held irregular. All Tranſactions of this Sort muſt be before * 8 at Night, as held in *Cooke* againſt *Ibbetſon, Trin.* 5 & 6 *Geo.* 2. But it appearing that a Plea was demanded *October* 26. and that Defendant did not move the Court till *Nov.* 7. although Judgment was ſigned *October* 28. Defendant hath not complained in the firſt Inſtance as he ought, and therefore the Rule to ſhew Cauſe why the Judgment ſhould not be ſet aſide was diſchared. *Belſield* for Plaintiff; *Urlin* for Defendant.

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* *Note*; The Hour was afterwards made 9.

Grey *againſt* Saunders. Hil. 8 Geo. 2.

THE Writ was returnable *tres Mich.* and an Appearance entred by the Plaintiff. The Declaration was left in the Office *November* 9. and Rule to plead then given, Notice of the Declaration filed was ſerved on Defendant *November* 11. Defendant moved laſt Term to ſet aſide the Judgment, and obtained a Rule to ſhew Cauſe, which was made abſolute upon hearing Council on both Sides. The Declaration not being delivered *de bene eſſe* was only well delivered from the Time of Notice, and before that Time no Rule to plead could be given. *Chapple* for Defendant; *Eyre* for Plaintiff.

Belwood *againſt* Chambers, Executrix.

FOUR Judgments had been ſigned againſt the Defendant, who had complained againſt Plaintiff, and Mr. *Rowning* her Attorney, for vexatious Proceeding in multiplying Suits, and had obtained a Rule for Plaintiff and *Rowning* to ſhew Cauſe why two of the Judgments ſhould not be ſet aſide with Coſts; and upon ſhewing Cauſe, it appeared that the firſt Judgment was after a Verdict ſigned *poſt mortem Defendentis ſecundum Statutum*; the ſecond was an Action of Debt upon the firſt Judgment, wherein Plaintiff recovered *de Bonis Teſtatoris*; the third ſuggeſting a *Devaſtavit*, was a Judgment *de Bonis propriis*; the fourth was in an Action brought upon the third Judgment, wherein Defendant was held to Bail; wherefore it was inſiſted by Plaintiff, that the whole Proceeding was perfectly regular, and that the third Judgment, which was the firſt whereupon Plaintiff could bring an Action of Debt to hold to Bail, was the firſt compleat Judgment. Defendant had brought a Writ of Error; whereupon the ſecond Judgment was affirmed in the Court of King's Bench, and lay by till after the fourth Judgment before ſhe made any Complaint of Irregularity or Vexation, without ever offering any Satisfaction for Plaintiff's Demand. For Defendant it was urged, that a *Devaſtavit* might have been ſuggeſted on the firſt Judgment, and that Multiplying ſo many Suits was vexatious and oppreſſive; and a Caſe was quoted, *Cooper* againſt *Draper*, *Trin.* 5 *Geo.* where the Court had ordered an Attachment againſt Mr. *Welland* the Attorney for loading the Defendant with Action upon Action of Debt upon Judgment. Court were of Opinion, that no Irregularity appeared in the Plaintiff, and that the Proceedings are warranted by Law, if there is any Hardſhip upon Defendant, it is occaſioned by her own ſtanding out, and therefore diſcharged the Rule. *Chapple* for Plaintiff and *Rowning*; *Eyre* for Defendant.

Long *againſt* Lingood.

PLaintiff replied to a Plea of a Record of a former Recovery of the ſame Debt, *quod non habetur aliquod tale Recordum*, and gave Notice upon the Back of the Replication to execute a Writ of Inquiry of Damages in Caſe Judgment went for him upon the Iſſue of *Nul tiel Record*. Defendant moved to ſet aſide the Inquiry for want of due Notice, and inſiſted that this Caſe is not within the Letter of any of the Rules of Court obliging Defendants to take ſhort Notice. A Rule was made to ſhew Cauſe, which was afterwards diſcharged upon hearing Council on both Sides. If this Caſe be not within the Letter of the Rules, it is within their Intention, and is warranted by the conſtant Practice of the Court. *Eyre* for Plaintiff; *Wright* for Defendant.

Warren *againſt* Lapdon. Eaſter 8 Geo. 2.

In Treſpaſs. THE Plaintiff declared *Quare cum*. *Belfield* moved in Arreſt of Judgment, but no Rule was made, the Court being of Opinion, that though the *cum* in the Count, if it ſtood alone, might be bad, yet the Recital of the Original which goes before helps it. *Clarke* againſt *Lucas*, *Mich.* 2 *Geo.* 2. ſame Caſe, which was removed into the King's Bench by Writ of Error, and remains there undetermined.

Jones *againſt* Wilkinſon.

THE Appearace was regularly entred by Plaintiff, and before Judgment Defendant employs an Attorney, and gives Notice thereof to Plaintiff's Attorney. The Queſtion was, Whether it was neceſſary to demand a Plea of Defendant's Attorney before Plaintiff could ſign Judgment, and the Court was of Opinion, that the Appearance being entered by Plaintiff, he ought to go on upon the Act of Parliament, and it is not neceſſary in that Caſe, that a Plea ſhould be demanded. *Darnal* for Defendant; *Comyns* for Plaintiff.

Arden *againſt* Lamley.

PLaintiff's Attorney after Writ of Error brought artfully delayed ſigning his final Judgment till the Writ of Error was ſpent, and then brought an Action of Debt upon the Judgment. The Court ordered Proceedings in the Action upon the Judgment to be ſtaid, and a new Writ of Error to be brought at Plaintiff's Attorney's Expence.

Maſon on the Demiſe of Kendale, *againſt* Hodgſon.

In Ejectment in Com' Staff'. THE Declaration was delivered to the Tenant in Poſſeſſion in *Trinity* Vacation laſt, with Notice to appear in *Hilary* Term then next. The Tenant in *Michaelmas* Term laſt entered an Appearance by his Attorney, but did nothing farther, and four Days after *Hilary* Term the Plaintiff finding no Appearance entered of *Hilary* Term, and no common Rule being entred into or Plea pleaded, ſigned Judgment againſt the Caſual Ejector. The Tenant moved to ſet aſide the Judgment, and on hearing Council on both Sides, the Court was of Opinion that the Judgment was regular, the Appearance ſhould have been entered of the Term mentioned in the Notice; but as the Title had not been tried, the Judgment was ſet aſide upon Payment of Coſts, entering the Appearance of the proper Term, and entering into the common Rule by Conſent. *Birch* for Defendant; *Skinner* for Plaintiff.

Atterbury *againſt* Troward. Trin. 8 & 9 Geo. 2.

A Plea in Abatement pleaded within four Days after the Declaration delivered, without taking the Declaration out of the Office, or paying for the Appearance which was entered by Plaintiff according to the Statute. The Plea was held to be pleaded regularly, and Judgment ſigned for want of a Plea was ſet aſide. *Belſield* for Defendant; *Chapple* for Plaintiff.

Taylor

Taylor *againſt* Lawſon.

PLEA delivered in the Country held to be bad, though with Notice to ſet off a mutual Debt, which Notice muſt neceſſarily be proved at the Aſſizes by the Perſon that delivered it, with the Plea; but the Plea being delivered the firſt Day of laſt Term, and the Country Attornies both living in the ſame Town, the Judgment was ſet aſide, and Coſts were ordered to attend the Event of the Trial. *Eyre* for Plaintiff; *Chapple* for Defendant.

Haſelfoot *againſt* Duke. Mich. 9 Geo. 2.

BY Agreement of the Country Attornies the Iſſue was to be delivered in the Country; but being tendered in Town, and not paid for by the Agent, Judgment was ſigned, which was held to be regular, the Agreement being void. *Wright* for Plaintiff; *Eyre* for Defendant. *Vide Elwood* againſt *Elwood, Trin.* 6 & 7 *Geo.* 2.

Craven *againſt* Aiſlabie. The ſame *againſt* Anderton.

A Motion was made to ſet aſide the Judgments in theſe Cauſes, and the Irregularity complained of was, that the Rules to plead were given before Notice of the Declarations being left in the Office were ſerved upon Defendants, the Appearances having been entered by Plaintiff, and the Proceeding upon the Act of Parliament. It appeared that Plaintiff's Attorney finding his Miſtake waived his Judgments, ſtruck out the old, and gave new Rules to plead, and after they were expired, ſigned Judgments again; and the Queſtion was, Whether he could do ſo without Leave of the Court. *Per Cur':* It is only one Entry upon Record in each Cauſe, and the former Judgments appear by the Prothonotary's Book to be ſigned by Miſtake, and the latter are regular. *Eyre* for Plaintiff; *Skinner* for Defendant.

Bray *againſt* Booth.

DEFENDANT pleaded a Tender, but brought no Money into Court; gave a Rule to reply, and for want of a Replication ſigned a *Non-pros*. Plaintiff looked upon the Plea as a Nullity, the Money not being brought into Court, and ſigned Judgment after the *Non-pros* obtained, and now moved] to ſet aſide the *Non-pros*. Defendant moved to ſet aſide the Judgment, inſiſting that Plaintiff could not regularly ſign Judgment till the *Non-pros* was ſet aſide; and of that Opinion was Sir *George Cooke*, but the two other Prothonotaries reported the Practice contrary; and the Court was of Opinion that the *Non-pros* not being rightly obtained, Plaintiff might proceed in the ſame Manner as he might have done in caſe ſuch *Non-pros* was not ſigned; and conſequently the Judgment is regular, and muſt ſtand; and the *Non-pros* being irregular muſt be ſet aſide. *Glyde* for Defendant; *Wright* for Plaintiff.

Lane *againſt* Smith. Mich. 10 Geo. 2.

AFTER Defendant had procured Time to plead by a Judge's Order, pleading an iſſuable Plea, he pleaded a Tender as to Part, and *Non aſſumpſit* as to the Reſidue. Plaintiff looked upon the Plea as a Nullity, and ſigned Judgment. It was urged that Plaintiff had taken the Plea out of the Office, which was an Acceptance of it; but *per Cur'*, the Plea is a Nullity, and Judgment is regular. *Skinner* for Defendant; *Agar* for Plaintiff.

Whitehead *againſt* Shaw. The ſame *againſt* Whitfield.

A Judge's Summons for Time to plead was taken out and ſerved after the Rule for pleading expired, notwithſtanding which Plaintiff's Attorney ſigned Judgment, which was held to be regular. A Judge's Summons regularly obtained is a Stay of Proceedings till diſcharged, or other Order made thereupon; but it is an Abuſe upon the Judge to apply for his Summons after Rule to plead expired, when no Summons ought to be granted; and therefore this Summons unduly obtained is no Stay of Proceedings. *Wright* for Plaintiff; *Bootle* for Defendant.

Leaver *againſt* Witcher. Hil. 10 Geo. 2.

PLaintiff having regularly ſigned Judgment, Defendant obtained a Rule to ſet it aſide on Payment of Coſts, pleading an iſſuable Plea, *&c.* Defendant afterwards pleaded the Statute of Limitation, and Plaintiff moved to ſet the Plea aſide. A Rule was granted to ſhew Cauſe, and made abſolute. The Court never give Leave to plead this Plea after a regular Judgment ſigned. Defendant muſt be bound to plead the General Iſſue, unleſs in caſe of a fair and honeſt Defence, where a Juſtification is abſolutely neceſſary. *Hawkins* and *Wright* for Plaintiff; *Draper* for Defendant.

Rolt *againſt* Way. Eaſter 10 Geo. 2.

PLaintiff's Attorney ſent a Copy of the Iſſue to the Chambers of Defendant's Attorney in *Clifford's Inn*, on a *Friday*, when Defendant's Attorney and his Clerk were in *Southwark* attending the *Marſhal's Court*. The Porter of the Inn was left in the Chambers, to whom the Iſſue-Book was tendered, and the Money charged thereon demanded, and he not paying the ſame, Judgment was ſigned, which was held regular, but was ſet aſide on Payment of Coſts, *&c.* Attornies muſt leave proper Perſons at their Chambers to do their Buſineſs in their Abſence. *Skinner* for Defendant; *Comyns* for Plaintiff.

Fen, on the Demiſe of Sawell, *againſt* Jolly and others.

In Ejectment. DEfendants appeared, pleaded and entered into the common Rule by Conſent, but their Attorney neglecting to pay for the Iſſue-Book, Judgment was ſigned againſt *Den* the Caſual Ejector. This Judgment was ſet aſide as irregular. Plaintiff might have ſigned Judgment againſt Defendants, who had appeared, for Non-payment of the Money for the Iſſue-Book, but not againſt the Caſual Ejector. *Chapple* and *Urlin* for Defendant; *Prime* for Plaintiff.

Ottiwell *againſt* D'Aeth. Trin. 10 & 11 Geo. 2.

AFTER Rule to plead expired, Defendant obtained and ſerved a Judge's Summons for Time to plead. Plaintiff's Attorney, notwithſtanding the Summons, ſigned Judgment. Defendant moved to ſet aſide the Judgment, and on ſhewing Cauſe the Court held the Judgment to be regular. A Summons for Time after Rule to plead expired is not a *Superſedeas* or Stay of Proceedings. The Judge was impoſed upon, he would not have granted the Summons, had he known the Rule was out. The Judgment is regular, but was ſet aſide on Payment of Coſts, pleading the General Iſſue, and taking ſhort Notice of Trial. *Price* for Defendant; *Belfield* for Plaintiff.

Simpſon *againſt* Daffield, Adminiſtrator, on Bond. Mich. 11 Geo. 2.

DEclaration was delivered with Blanks, and Rule to plead given *October* 24. The 26th Blanks were filled up, and Defendant at the ſame Time demanded Oyer of the Bond. The 27th at Eight in the Evening Oyer was given, and Plea demanded, and 28th Judgment was ſigned. which was held irregular, and ſet aſide. Defendant ought to have the ſame Time to to plead after Oyer given as remained unexpired of the Rule to plead at the Time of Oyer demanded. *Agar* for Defendant; *Skinner* for Plaintiff.

Lovel *againſt* Dyer.

DEfendant before laſt Aſſizes obtained a Judge's Order for Time to plead, pleading an iſſuable Plea, and taking ſhort Notice of Trial, but did not plead to Iſſue, and for want thereof Plaintiff ſigned Judgment. Defendant moved to ſet aſide the Judgment, pleading to Iſſue, and paying Coſts, and obtained a Rule to ſhew Cauſe, which was diſcharged, Plaintiff having loſt the Benefit of laſt Aſſizes. *Draper* for Plaintiff; *Gapper* for Defendant.

Craven *againſt* Hanley.

THIS was an Action of Treſpaſs, whereto Defendant pleaded a bad Juſtification. Plaintiff took Iſſue, and Defendant obtained a Verdict. Plaintiff moved an Arreſt of Judgment, and the Court heard Council on both Sides ſeveral Times, and took Time to conſider, and in *Eaſter* Term laſt made a Rule to ſtay the Entry of Judgment on Defendant's Verdict, and that Plaintiff ſhould have Leave to ſign Judgment, the Treſpaſs being confeſſed by the Plea. Pending the Conſideration of the Court, Defendant died, and laſt Term Plaintiff obtained a Rule for Defendant's Executor to ſhew Cauſe why he ſhould not enter Judgment *nunc pro tunc*, which Rule was made abſolute. It was urged for Defendant's Executor, that Plaintiff hath delayed himſelf. He was to blame in joining an immaterial Iſſue; but *per Cur'*, the Party muſt not ſuffer by the Court's taking Time to conſider. *Eyre* for Plaintiff; *Parker* for Executor of Defendant. *Baller* againſt *Delander*, *Trin.* 1 *Geo. in B. R. Taylor* againſt *Mathews*, *Hil.* 2 *Geo. in B. R.*

Browne *againſt* Godfrey.

DEfendant's Attorney took out a Summons from Mr. Juſtice *Forteſcue* for Time to plead in the Beginning of *Trinity* Vacation laſt, and attended thereon. Plaintiff's Attorney did not attend, and before the Summons was renewed or diſcharged ſigned Judgment. Defendant's Attorney offered to plead iſſuably, and take Notice of Trial Time enough for Plaintiff to have tried his Cauſe at laſt Aſſizes; but Plaintiff refuſed to accept the Plea, and inſiſted on his Judgment. *Per Cur'*: The Judgment ſigned without diſcharging the Summons is irregular, and muſt be ſet aſide. *Eyre* for Defendant; *Parker* for Plaintiff.

Grimes *againſt* Cleaver.

HELD *per Cur'*, that though Judgment be irregular, Defendant cannot move to ſet it aſide, unleſs the Motion be made two Days before the Day appointed for the Execution of the Writ of Inquiry of Damages, (according to the Report of Prothonotary *Thomſon*, who quoted *Smith* againſt *Jenks*, *Hil.* 5.

Geo. 2.) the Irregularity complain'd of being a Defect in the Notice of Declaration ſerved on Defendant, after Appearance enter'd by Plaintiff according to the Statute.

If the Irregularity be in the Notice ſubſcribed to the Copy of Proceſs, the Motion muſt be made before Judgment ſigned; if in the Notice of Declaration, two Days before the Time appointed for the Execution of the Writ of Inquiry.

Prudhoe *againſt* Armſtrong. Hil. 11 Geo. 2.

DEfendant prevailed to ſet aſide a regular Judgment on Payment of Coſts; and preſſed to be let in to plead a Special Juſtification; but Plaintiff having been delayed an Aſſizes, the Court confin'd Defendant to plead the General Iſſue.

Roundell *againſt* Powell.

BOOTLE moved for Leave to enter Judgment upon an old Warrant of Attorney, on Affidavit that Defendant, who reſided at *Jamaica*, was living and in good Health, and had been ſeen and converſ'd with there by the Perſon who made the Affidavit on 13th *September* laſt. He ſailed from *Jamaica* very ſoon afterwards, and arrived at *London* 15th *January* following. Motion was granted.

Wallace *againſt* Willington.

STILLINGFLEET, Agent for *Worrall*, Plaintiff's Attorney, gave *Wilmot*, Defendant's Agent, Time to plead; after which *Worrall* comes to Town himſelf calls upon *Wilmot* for a Plea, and for want thereof ſigns Judgment before the Time given by *Stillingfleet* was expired. This Judgment was held irregular, and ſet aſide; all Matters of this Sort are to be tranſacted by the Agents in Town, and not by Country Attornies. *Bootle* for Defendant; *Birch* for Plaintiff.

Stafford *againſt* Little.

THIS was an Action upon the Caſe on a Promiſſory Note, whereto Defendant pleaded *Nil debet*; Plaintiff looked on the Plea as a Nullity, and ſigned Judgment for want of a Plea; which the Court held to be regular.

Evans *againſt* Tillam.

Capias ret' Octab' Hilar'. Declaration left in the Office *January* 23, and Rule to plead given; the 30th Plaintiff entered Appearance by Affidavit, and 31ſt ſigned Judgment. The Objection to the Regularity of the Judgment was, that no Indorſement was made on the Copy of the Declaration left in the Office, ſignifying that it was left conditionally, or *de bene eſſe*. Judgment ſet aſide without Coſts.

Oſborne *againſt* Haddock. Eaſter 11 Geo. 2.

MOTION made by *Skinner* againſt Judgment for Plaintiff upon the Iſſue of *Nul tiel Record*. The Caſe was Plaintiff had miſtaken *Commorancy* in his Declaration: Defendant had pleaded in Abatement, and annexed Affidavit of the Truth of his Plea. Plaintiff brought a new Action, and Defendant pleaded the former Action depending, upon which Plaintiff of his own Head, without Leave of the Court, entered a *Nil capiat per breve*. The Officers were aſked their Opinions, who all agreed it to be conſtant Practice, and the Court allowed it: But then another Queſtion aroſe, Whether Plaintiff could have made ſuch an Entry in Caſe the firſt Plea had not been in Abatement. *Borrett* and *Thomſon* ſaid it was confined to Abatement; but *Cooke* thought it might be in all Caſes. The Court ſaid it was impoſſible to be ſo, and held it confined to Abatement. *Skinner* and *Agar* for Defendant; *Draper* for Plaintiff.

The King *againſt* Firebrace, Bart. and others, in Deceit, for ſuffering a Common Recovery of Lands in Havering atte-bower Com' Eſſex, being Ancient Demeſne, whereof the King is now ſeiſed. Mich. 12 Geo. 2.

DEfendants confeſs the Action, and the King's Attorney remits the Damages, and prays Judgment, as appears by the Record now read. *Comyns* moved *ex parte Regis* for Judgment, and the Court gave Judgment *Niſi Cauſa*; and no Cauſe being ſhewn, Judgment was entered. The ſame Caſe *Mich.* 3 *Geo.* 2. *The King* againſt *Comyns*.

Darlow *againſt* the late Duke of Wharton. Hil. 12. Geo. 2.

MOTION by *Agar* to enter Satisfaction on the Record of Judgment in Plaintiff's Name, *nunc pro tunc*, Plaintiff being dead, after executing a Warrant of Attorney to acknowledge Satisfaction, and his Adminiſtrator become Lunatick, as appeared by the Affidavit of a Phyſician, who attended her. The Court made a Rule upon the late Duke's Truſtees to ſhew Cauſe, which on Affidavit of Service was made abſolute.

The King *againſt* Willis.

DEfendant was reported to have fully anſwered ſome of the Interrogatories, and to be in Contempt as to others; and being brought into Court to receive Judgment, the Queſtion was, Whether all the Affidavits in a Cauſe, *Lane* againſt *Jones*, containing the whole Charge againſt Defendant, ought to be now read, or only ſuch of them as relate to that Part of the Charge, which Defendant, on his Examination, hath not fully anſwered. The three Prothonotaries reported, that Defendant being in Contempt, his Examination goes for nothing, and Affidavits containing the whole Charge were read.

Webb, Adminiſtrator of Ruſſell, *againſt* Spurrell.
Eaſter 12 Geo. 2.

THIS was an Action of Debt on Judgment, and *Nul tiel Record* pleaded. The Caſe was, Action between *Ruſſel* againſt *Spurrell* tried *Trin.* 10 *Geo.* 2. 1736. and final Judgment ſigned on the *Poſtea* that Vacation, *viz. October* 19, when the *Poſtea* was taken away by Plaintiff's Attorney, and not brought back to the Office to have the Judgment entered 'till a few Days before the Motion. It appeared by Affidavit, that *Ruſſell* died in *Auguſt* 1736. And *Draper* for Defendant moved upon Stat. 18. *Car.* 2. *cap.* 8. to ſtay the Entry of Judgment, Plaintiff's Repreſentative being bound by the ſaid Statute to enter it within two Terms after Plaintiff's Death, and this Judgment is not entered yet. Rule obtained to ſhew Cauſe. *Prime* for Plaintiff urged, that the Fee to the Clerk of the Judgments for entering Judgment was paid at the Time of Signing, and the Party may have the Entry made at any Time; that the Judgment muſt be looked upon as actually entered from the Time of Signing. The Rule enlarged. *Per Cur':* This Practice may be of dangerous Conſequence. Purchaſers, *&c.* ſhould not be put to ſearch Prothonotaries Books for Minutes of Judgments ſigned, it ought to be ſufficient for them to have Recourſe to the Record. Let a General Rule be drawn up, that after the firſt Day of next Term all *Poſteas* and Inquiſitions, whereon final Judgments are ſigned, be left with the Prothonotaries in order that the Judgments may be immediately entered.

Turner *againſt* Williams.

DEfendant pleaded by an Attorney of another Court, and Plaintiff looking upon the Plea as a Nullity, ſign'd Judgment, which was held to be regular; and the Rule to ſhew Cauſe why the Judgment ſhould not be ſet aſide was diſcharged. *Belfield* for Plaintiff; *Hayward* for Defendant.

Wentworth, Bart. *againſt* Huſtler, Widow. Trin. 13 Geo. 2.

In Waſte. PLaintiff gave a common Rule to plead, and at the Expiration thereof, without giving a peremptory Rule, ſigned Judgment. Defendant moved to ſet the Judgment aſide, inſiſting that a peremptory Rule ought to have been given as in a Real Action; and of this Opinion were the Court. The Place waſted, as well as Damages, being to be recovered in the Action by the Statute of *Glouc'*, *cap.* 5. In Mixed Actions a peremptory Rule is neceſſary, as well as in Real Actions (except Replevin) and the Judgment was ſet aſide without Coſts. *Draper* for Tenant; *Skinner* for Demandant.

Cruſe *againſt* Williams, Adminiſtrator. Hil. 13 Geo. 2.

A Regular Judgment was ſet aſide upon Payment of Coſts, (Plaintiff not having been delayed of a Trial) and pleading *Plene adminiſtravit*, which (Defendant being an Adminiſtrator) was deemed as the General Iſſue. *Huſſey* for Defendant; *Belfield* for Plaintiff.

Curd *againſt* Eaſtmead.

In Ejectment. CAUSE tried at *Summer* Aſſizes, 1739, in *Kent*, *Oct.* 27 *ult.* Defendant allowed a Writ of Error, and ſerved Plaintiff's Attorney with Notice of the Allowance. Writ of Error returnable 15 *Martini*. Judgment not ſigned till after the Return, *viz. Dec.* 26. and then Plaintiff takes Poſſeſſion. The Writ of *Habere facias poſſeſſionem* was held to be irregular, and was ſet aſide, and Poſſeſſion ordered to be reſtored. Plaintiff's Attorney ordered to pay Coſts, and by Conſent no Action to be brought; the Judgment being of *Michaelmas* Term is affected by the Writ of Error. *Eyre* for Plaintiff; *Agar* for Defendant.

Webb *againſt* Spurrell. Trinity 13 & 14 Geo. 2.

PLaintiff recovered a Verdict, and after the Trial, and before Final Judgment ſigned, died inteſtate. Plaintiff's Adminiſtrator cauſed Final Judgment to be ſigned 19th *October* 1736, which was within two Terms after the Verdict, but the Roll was not brought into the Office, nor entered upon Record; after the two Terms lapſed, Defendant left a Caveat with the Clerk of Eſſoigns, againſt receiving this Roll; and an Action of Debt being brought by Plaintiff's Adminiſtrator on the Judgment, *Draper* for Defendant moved to ſtay the Entry of Judgment, the ſame not having been entred within two Terms, according to the Statute 17 *Car.* 2. *cap.* 8. and obtained a Rule to ſhew Cauſe; which upon hearing *Prime* for the Plaintiff, was diſcharged, without Coſts on either Side. *Per Cur'*: The Practice of not bringing Rolls into the Office within due Time is very inconvenient, and muſt be remedied by a new General Rule. In this Caſe, the ſigning muſt be conſidered as the Entry; the Fee for entring the Final Judgment was paid to the Clerk of the Judgments at the Time it was ſigned; the Roll muſt be received and filed *nunc pro tunc*.

Wait, an Attorney, *againſt* Garth.

JUdgment was ſigned of *Hilary* Term 1733, but, by Omiſſion of Plaintiff's Agent, the Roll was not doquetted and carried into the Office till 29 *June* 1737; and the true Day of doquetting was marked upon the Doquet by the Clerk of the Eſſoigns. *Milner*, who pretended to be a Purchaſor of Defendant's Eſtate for a valuable Conſideration, on 19 *Jan.* 1736, without Notice of this Judgment, moved, and had a Rule for Plaintiff to ſhew Cauſe why the Doquet ſhould not be ſet aſide as void by the Statute 4 & 5 *W.* & *M. cap.* 20. Upon ſhewing Cauſe it appeared, that the Judgment was for a Debt *bona fide*, and that the Roll was accidentally miſlaid, and omitted to be carried in, the true Time of doquetting appeared to be plainly and fairly entred, without Fraud; and an *Elegit* upon this Judgment appeared to be executed in 1735; and that *Milner* had Notice thereof, who ſeemed, upon the Affidavits, to be a colourable Purchaſor to aſſiſt Defendant. *Per Cur'*: The true Time of doquetting not being concealed, and no Fraud appearing on the Part of the Plaintiff, We will not interpoſe; *Milner* may bring his Ejectment, and take what Advantage he can. It appeared that *Milner* had not made any Search for Judgments againſt Defendant till after his Purchaſe. The Rule was diſcharged. *Prime* and *Bootle* for Plaintiff; *Birch* and *Agar* for for *Milner*.

Note; *Milner* having brought his Ejectment before this Motion came on, the Cauſe was tried at *York* at the Summer Aſſizes 1740, before Mr. Juſtice *Parker*; when *Wait*, who was in Poſſeſſion, ſet up the above Judgment, in Oppoſition to *Milner*'s Title; but *Milner* proving, by the Clerk to the Clerk of the Eſſoigns, that the Judgment-Roll was not carried in to the Clerk of the Eſſoigns and doquetted till 29th *June* 1737, and the Purchaſe-Deeds being executed 18th & 19th *January* 1736, the Judge of Aſſizes determined, That the Judgment, by Reaſon of it's not being doquetted antecedent to the Purchaſe-Deeds, was no Bar to *Milner*'s Title: Therefore a Verdict was found for Plaintiff.

Fowler *againſt* Whadcock. Eaſter 14 Geo. 2.

A Rule was obtained by Plaintiff to ſhew Cauſe why Judgment ſhould not be entered *nunc pro tunc*. The Cauſe was tried in *London* at the Sitting after *Trinity* Term 7 & 8 *Geo*. 2. Defendant filed a Bill in Chancery, and got an Injunction, which was diſſolved 19th *May* 1740, and then Search was made among *Higham* the late Aſſociate's Papers, but the *Poſtea* could not be then found. 21ſt *June* 1740 Defendant died. It appeared that the Bill in Chancery was brought in 1733, and the Anſwer did not come in till 1738, and a further Anſwer not till 1739. *Per Cur'*: By the Statute 17 *Car*. 2. *cap*. 8. Judgment may be entred within two Terms after the Verdict, and the Death of the Party between the Verdict and Judgment ſhall not be aſſigned for Error; but this Caſe is not within that Statute; and the Delay is purely the Plaintiff's, and not occaſioned by the Court. Let the Rule be diſcharged. *Draper* for *Humphry Whadcock*, Heir and Executor of Defendant; *Bootle* for Plaintiff.

Gardner *againſt* Goodall.

JUdgment was ſigned for Want of paying for the Iſſue-Book, and Defendant had a Rule to ſhew Cauſe why the Judgment ſhould not be ſet aſide. Upon ſhewing Cauſe it appeared, that Plaintiff had charged and demanded for the Iſſue-Book 6 *s.* 8 *d.* more than was due. The Court were clearly of Opinion, that the old Doctrine, that Defendants muſt pay whatever was demanded for Paper-Books, ought to be exploded; it is ſufficient if they are ready to pay what is due. Let the Judgment be ſet aſide, without Coſts, Defendant taking ſhort Notice of Trial for the third Sitting. *Urlin* for Defendant; *Belſield* for Plaintiff.

Wagſtaffe *againſt* Long, an Attorney. Mich. 15 Geo. 2.

DEfendant, bound by a Judge's Order to plead an iſſuable Plea, pleaded that Plaintiff was an Infant, and ought to ſue by *Prochien Amy*, and not by Attorney. Plaintiff looked upon this Plea as a Nullity, and ſigned Judgment. *Hayward*, for Defendant, moved to ſet the Judgment aſide. But the Court refuſed to make any Rule, being of Opinion that this is a Plea in Abatement, and conſequently null and void. The Judgment is regular, and Plaintiff was not obliged to apply to the Court to ſet aſide the Plea. An iſſuable Plea is a Plea in chief, upon which Plaintiff may take Iſſue.

Longman *againſt* Rogers.

THIS was an Action of Debt on Bond. Defendant craved Oyer and a Copy of the Bond and Condition, and had the ſame, but without the Witneſſes Names, or a Copy of an Agreement ſubſcribed to the Condition. Plaintiff ſigned Judgment for Want of a Plea, and Defendant moved to ſet the ſame aſide; inſiſting, that he was intitled to a more perfect Copy, with Witneſſes Names, *&c.* The Practice was reported to be, that Defendant was intitled to Oyer of no more than the Bond and Condition, and not the Witneſſes Names, *&c.* But *per Cur'*: That Practice is unreaſonable, and muſt be altered. After a *Proſert* of a Deed, it is conſidered as in Court, and it may be material for the Party's Defence to inſpect the ſame, and take a Copy of the Whole, with Witneſſes Names, and all Memorandums ſubſcribed or indorſed, which he has a Right to. Anciently the Witneſſes were Parties to the Deed, and were incorporated with the Jury to try the Deed. Let the Judgment be ſet aſide, without Coſts. Let Defendant have a Compleat Oyer, and a Copy of the Deed and Witneſſes, *&c.* and plead an iſſuable Plea. It was objected, that *Milton*, Defendant's Attorney, who ſigned the Notice of Motion, was a Priſoner in the *Fleet*, and conſequently the Notice, *&c.* void. But *per Cur'* : The late Act of Parliament diſqualifying Attornies who are Priſoners from practiſing, relates only to proſecuting, and not to defending Suits. *Wynne* for Defendant ; *Skinner* for Plaintiff.

Buckle *againſt* Lucas, Adminiſtrator.

JUdgment was ſigned as quickly as could be, and ſtrictly regular, but was ſet aſide on Payment of Coſts ; and Defendant had Leave to plead two Bonds, and *Plene adminiſtravit præter. Draper* for Defendant ; *Prime* for Plaintiff.

Hopkins *againſt* Knapp, an Attorney.

THIS was an Action on the Caſe *ſuper Aſſumption'*, and after Iſſue joined on *Nul tiel Record*, Plaintiff's Attorney delivered the Book, and gave Defendant a Day to bring into Court the Record by him averred, *(viz.) Monday* next after eight Days of St. *Martin* ; and the Record not being brought in that Day, Plaintiff drew up a Rule for Judgment, unleſs Cauſe, on *Wedneſday* next, ſigned Judgment, and executed a Writ of Inquiry of Damages. Defendant objected to the Judgment, that the Rule ſhould have been, unleſs Cauſe within four Days, and not for a ſhorter Time. *Per Cur'*: Where the Judgment is final, the Rule ſhould be, unleſs Cauſe within four Days, that Defendant may have that Time to move in Arreſt of Judgment ; but where the Judgment is interlocutory, (as in this Caſe) that Reaſon fails, and there is no Occaſion for a four Days Rule ; becauſe Defendant may move in Arreſt of Judgment after the Inquiry executed. Where the Proceeding is by Original, and a general Return Day is given to bring in the Record, the Defendant ought to be called to bring in the Record at the Riſing of the Court that Day; and if he fail, the Rule for Judgment ſhould be, unleſs Cauſe on the Appearance Day of that general Return, and the Record may be brought in on that, or any intervening Day; but here, where the Proceeding is by Bill againſt an Attorney, and the Day given to bring in the Record is a Day certain, the Record cannot be brought in after that Day; but on that Day, at the Riſing of the Court, Defendant ought to be called to bring in the Record; and if he fail, the Court will appoint the Day to be inſerted in the Rule for Judgment *Niſi Cauſa*. The Rule drawn up for Judgment *Niſi* was held good, and the Objection to the Judgment over-ruled.

Defendant objected to the Writ of Inquiry, that it was executed on leſs than fourteen Days Notice, though he lived above forty Miles from *London*; and this Objection being valid, the Inquiry, and Inquiſition taken thereon, were ſet aſide. Defendant's being an Attorney, and ſuppoſed to be preſent in Court, makes no Difference, the Place of his actual Reſidence being at *Abingdon*, above forty Miles from *London*. *Skinner* for Defendant; *Bootle* for Plaintiff.

Smithſon *againſt* Broughton, an Attorney. Trinity 16 Geo. 2.

UPON an Attendance of the Attornies on both Sides 2d *June*, a Judge's Order was made, by Conſent, for nine Days Time to plead; on 12th *June* Defendant obtained and ſerved a Summons for further Time to plead; and after ſuch Service, which was before Noon, Plaintiff's Agent ſigned Judgment; inſiſting, that the Summons for further Time, taken out after the Expiration of the Time to plead given by the Order, was a Nullity. This Judgment may be ſtrictly regular; but it is quick Practice in Plaintiff's Agent. The Summons was ſerved before he could regularly ſign his Judgment, which he could not do till the Opening of the Prothonotary Office in the Afternoon of the 12th *June*. The Judgment was ordered to be ſet aſide, and Defendant to plead an iſſuable Plea, and take Notice of Trial within Term.

Northern, Adminiſtrator, *againſt* Oliver.

ON the 1ſt *December* 1741 Plaintiff's Inteſtate died, and on the 6th of ſame *December* Interlocutory Judgment was ſigned of the *Michaelmas* Term preceding; Defendant moved to ſet aſide the Judgment and the ſubſequent Proceeding by *Sci. fa.* thereupon. Upon ſhewing Cauſe, the Court were of Opinion, that the Roll having been filed before the Eſſoign Day of *Hilary* Term, the Judgment is good by Relation, though the Party was dead before the actual Signing, eſpecially as it is only Interlocutory, and no Day of ſigning is required to be ſet to it. *Oades* againſt *Woodward, Salk.* 87. And the Rule to ſhew Cauſe why the Judgment, &c. ſhould not be ſet aſide, was diſcharged. *Wynne* for Defendant; *Draper* for Plaintiff.

Southerton, an Attorney, *againſt* Greenfield. Mich. 16 Geo. 2.

AFTER a Judge's Order for two Days further Time to plead, Plaintiff, on the third Day before Noon, ſigned Judgment, ten Days before the End of laſt Term. Defendant did not move then, nor till after Delay of Trial in *Middleſex*, and Writ of Inquiry executed. *Per Cur'*: The Judge's Order is an Enlargement of the Time to plead, and Judgment could not be regularly ſigned till the third Day in the Afternoon: But in this Caſe, Defendant's Application comes too late. The Rule to ſhew Cauſe why the Judgment ſhould not be ſet aſide, was diſcharged. *Prime* for Plaintiff; *Draper* for Defendant.

Broadbent *againſt* Wilks.

VERDICT for Defendant on two Iſſues joined upon Not guilty, and a Juſtification. By the Special Plea the Treſpaſs was confeſſed; Judgment was ordered to be entered for the Plaintiff, notwithſtanding the Verdict, the Treſpaſs being confeſſed by the Special Plea. The true Method is, not to ſtay the Entry of Judgment upon the Verdict by Rule, but to enter the Verdict upon Record, and then Judgment for the Plaintiff, *non* *obſtante Veredicto*. *Prime* and *Agar* for Plaintiff; *Bootle* for Defendant.

Ford and Ford *againſt* Odam. Eaſter 16 Geo. 2.

Defendant, an Infant, put in a Parol Demurrer, without any Affidavit of the Infancy; Plaintiff looked upon it as a Nullity; and ſigned Judgment. The Court held this to be no Plea, either in Bar or Abatement; but properly a Demurrer; and that an Affidavivit is not requiſite. The Judgment was ſet aſide. Plaintiffs may reply Full Age, if they think fit. *Draper* for Defendant; *Belſield* for Plaintiffs.

Gylbert *againſt* Gylbert, in Debt on Bond; The Same *againſt* The Same, in Caſe.

Declarations were delivered, and Pleas demanded, in the Country; and Oyer and a Copy of the Bond demanded, and a Copy given there laſt Term; and Judgments being ſigned for Want of Pleas, Defendant moved and obtained a Rule to ſhew Cauſe, why the Proceedings ſhould not be ſet aſide; inſiſting, that the Delivery of the Declarations, &c. in the Country were irregular, and ought to have been tranſacted in Town; but the Court held otherwiſe. It is ſettled, that Notice of Trial and of the Execution of a Writ of Inquiry of Damages, may be given in the Country. Every Thing that depends upon Practice may be varied, but not the Law. Defendant's Attorney accepted the Declarations, demanded Oyer of the Bond, and was contented with a Copy in the Country. The Rule was diſcharged. *Skinner* for Defendant; *Belſield* for Plaintiff.

Hall *againſt* Morſe. Trinity 16 & 17 Geo. 2.

Defendant died 16th *February*, and Judgment ſigned the 21ſt; Plaintiff revived the Judgment by *Sci. fa.* againſt Defendant's Adminiſtrator, and after two *Nichils* returned, Execution was awarded. The Court held, That all Judgments muſt be taken to be pronounced in Term-Time; and that ſigning Judgment in the Vacation following, though after the Death of the Party, is good; and the Rule to ſhew Cauſe why the Judgment, *&c.* ſhould not be ſet aſide, was diſcharged. *Belfield* for Plaintiff; *Draper* for Defendant's Adminiſtrator. *Harman* againſt *Smith*, 6 *Mod.* *Oates* againſt *Woodward*, *Salk.* 87. *Northern* againſt *Oliver*, *Trin.* 1742, *in C. B.* *Fuller* againſt *Jocelyn.* Duke of *Norfolk*'s Caſe, *Fariſley* 39. *Salk.* 401.

The Duke of Leeds *againſt* Vevers, in Debt on Bond. Hil. 17 Geo. 2.

DEfendant was intitled to eight Days to plead, and within that Time, but after the four Days Rule expired, demanded Oyer of the Bond. Plaintiff inſiſted, that the Demand after the Expiration of the Rule to plead, was void, and ſigned Judgment. The Court held, that a Demand of Oyer at any Time within eight Days, where by the Courſe of the Court Defendant is intitled to eight Days to plead, is good; and ſet aſide the Judgment. *Bootle* for Defendant; *Skinner* for Plaintiff.

Fawkes *againſt* Atkinſon. Mich. 17 Geo. 2.

DEfendant died 27th *September* 1743, on the 1ſt of *October* then next Judgment was ſigned of the preceding Term, by Virtue of a Warrant of Attorney, and 27th ſame *October* a *Fi. Fa.* was executed. Defendant's Repreſentatives moved to ſet aſide the Judgment and Execution, but the Court made no Rule. The Judgment is well ſigned of the preceding Term, according to the Courſe of the Court, and relates to the Eſſoign Day of that Term, the Day is material only with Reſpect to charging Lands, *&c.* *Prime* for Defendant.

Dalrymple *againſt* Colli.

DEfendant, upon his Marriage, executed a Deed dated 20th *Auguſt* 1743, with a Power therein contained to enter Judgment at Plaintiff's Suit for a certain Sum, but without mentioning Term or Time, or whether upon Bond or *Mutuatus*, or otherwiſe. This Deed was executed as a Security *inter al.* for Defendant's transferring 2000 *l.* *South Sea* Annuities, upon Truſt for his Wife, within ten Days; and Defendant having failed, Plaintiff, after the End of eighteen Days took out a *Fi. fa.* upon the Judgment, which was entered 23d *Auguſt* 1743, on a *Mutuatus*. The Objections were, that the Words of the Power were [*I bind myſelf, &c.*] and the Judgment could be properly entered on an Obligation only, not on a *Mutuatus*, and not till after the Condition broken, and conſequently not till this preſent Term. The Court thought, that as the Power was at large and unconfined, the Judgment was well entered on a *Mutuatus* of the preceding Term, and the *Fi. fa.* not being taken out till after a Breach of the Condition was regular, and conſonant to the Intention of the Parties. The Rule to ſhew Cauſe why the Judgment and *Fi. fa.* ſhould not be ſet aſide was diſcharged. Had the Judgment been entered of the preceding Term upon the Bond, it would have been abſurd upon the Face of it, the Date of the Bond would have appeared; but as it is entered upon a *Mutuatus*, it is not irregular or erroneous. *Skinner*, *Prime*, *Wynne* and *Bootle* for Plaintiff; *Willes* and *Draper* for Defendant.

Wetherall *againſt* Hawes. Trinity 18 & 19 Geo. 2.

ON ſhewing Cauſe againſt a Rule to ſet aſide a Judgment, all the Objections were fully anſwered except one, which was an Irregularity in Service of the Proceſs; and the Court held, that this Objection, according to the ſettled Practice, comes too late after Judgment. The Rule diſcharged. *Bootle* for Defendant; *Prime* for Plaintiff.

Baker *againſt* Barlow and his Wife, Executors. Mich. 19 Geo. 2.

DEfendants pleaded three Pleas by Leave of the Court, on two of which Iſſues were joined; on the third, for Want of a Rejoinder, Plaintiff ſigned Judgment *quod recuperet*, and took out Execution. The Court held, that after Judgment on the third Plea, (which was *Plene Adminiſtravit*) the Iſſues on the two other Pleas muſt be tried before Plaintiff can recover. If Defendant prevails on any of the Pleas, Plaintiff cannot recover. Rule abſolute to ſet aſide Judgment and Execution, with Coſts; Defendants conſenting to bring no Action. *Prime* for Defendants; *Skinner* for Plaintiff.

Goodtitle

Goodtitle *againſt* Notitle, on the Demiſe of Brymer and others, in Ejectment. Eaſter 19 Geo. 2.

THE Agent for the Tenants in Poſſeſſion entered their Appearance with the Filazer, entered into the common Rule, and ſent a Note to Plaintiff's Agent, That Defendants pleaded Not gulity. Plaintiff's Agent ſigned Judgment for Want of a Plea in Form. The Counſel for the Tenants ſubmitted to the Court, That according to Words of the Rule for Judgment againſt the Caſual Ejector, unleſs the Tenants appear, a new Declaration againſt the Tenants ſhould in Strictneſs have been delivered before a Plea in Form could be required. Judgment ſet aſide, without Coſts. *Skinner* and *Willes* for Defendant; *Prime* and *Bootle* for Plaintiff.

Savile *againſt* Wiltſhire.

DEfendant died 20th *April*, on the 21ſt *April*, Application was made on Affidavit from *Eſſex*, ſworn 19th *April*, for Leave to enter Judgment on an old Warrant of Attorney; Rule made and Judgment ſigned the 21ſt *April*. Motion by Executors of Defendant to ſet aſide the Judgment. Defendant being dead before the Rule made and Judgment ſigned. Rule to ſhew Cauſe. If it had appeared to the Court that Defendant was dead, Leave had not been given to enter Judgment, but *Quod fieri non debuit factum valet*. Here is no Impoſition on the Court. No Difference between a Warrant of Attorney under or above a Year old, ſave that if under, Judgment may be entered without, if above, not without Leave of the Court. The Judgment when ſigned relates to the Eſſoin Day of the preſent or preceding Term. Caſes are unifom. The Court will adhere to Fictions and Relations when they tend to promote Juſtice. The old Practice is altered by Act of Parliament, as to Lands only, with Reſpect to the Time from which Judgments are to affect Purchaſors. *Fuller* againſt *Jocelin* in *B. R. Mich.* 4 *Geo.* 2. *Chauncy* againſt *Needham*, *Viner*, Title *Judgment*, 17 *Geo.* 2. *B. R.*

Maurice *againſt* Engier. Mich. 20 Geo. 2.

DEfendant obtained a Judge's Order for Time to plead, pleading an iſſuable Plea, rejoining *gratis*, and taking Notice of Trial within Term. Defendant pleaded accordingly, and Plaintiff replied; and then Defendant, inſtead of rejoining, demurred, merely for Delay. Plaintiff not having Time to ſet down the Demurrer to be argued within Term, ſigned Judgment. Defendant moved to ſet aſide the Judgment, and a Rule was made to ſhew Cauſe. Upon hearing Counſel on both Sides, the Court thought Defendant's Practice a meer Trick, and diſcharged the Rule. By rejoining *gratis* is meant, rejoining without the common four Days Rule to rejoin. *Bootle* for Defendant; *Draper* for Plaintiff.

Randle *againſt* Warr and others. Hilary 20 Geo. 2.

IT appearing to the Court, that Defendants ſet up a fair Defence, which they could not have the Benefit of under the General Iſſue. The Judgment, which was regular, was ſet aſide, on Payment of Coſts, and pleading an iſſuable Plea, without confining Defendants to the General Iſſue; which, for the particular Reaſons offered in this Caſe would ſignify nothing. *Wynne* for Defendants; *Skinner* for Plaintiff.

Swinley *againſt* Woodhouſe, Clerk, in Debt on Bond. Mich. 21 Geo. 2.

DEfendant ſuperſeded the *Exigent*, which was returnable *Tres Mich.* Plaintiff delivered a Declaration, laying his Action in *London*, without Notice to plead indorſed, gave a Rule to plead, and for Want of a Plea within four Days, ſigned Judgment. Defendant objected the Want of Notice to plead indorſed on the Declaration, purſuant to General Rule *Eaſter* 3 *Geo.* 2. relating to all Proceſs returnable the firſt or ſecond Return of any Term. Defendant alſo inſiſted, That as he lived above twenty Miles from *London*, he was intitled to eight Days Time to plead, by General Rule *Mich.* 3 *Geo.* 2.

It was urged for the Plaintiff, That theſe Rules relate to Proceſs of *Capias, &c. ad reſpondendum*, and not to an *Exigent*. That after a Defendant had ſtood out the common Proceſs of *Capias, Alias* and *Pluries*, and came not in till the Return of the *Exigent*, he was always, by the ancient Courſe of the Court, obliged to take a Declaration, and plead the ſame Term, without Imparlance, or more Time to plead than given by the common Rule. *Vide Praxis utriuſque Banci, Bancus Communis, fol.* 8. That theſe Rules were intended to forward Plaintiffs in common Caſes, and not to delay them, where Defendants could not be brought into Court on the ordinary Proceſs. The Words of the Rules being general, and extending to all Proceſs returnable the firſt or ſecond Return, without Exception as to an *Exigent*, or any other particular Proceſs, the Court ordered the Judgment to be ſet aſide, without Coſts. *Prime* for Defendants; *Skinner* for Plaintiffs.

Chapman *againſt* Cattern, otherwiſe Catterns.

AFTER Judgment, and Notice of executing a Writ of Inquiry of Damages, Defendant in *November* moved to ſet aſide the Proceedings; objecting, that though the Act to prevent vexatious Arreſts expired 1ſt *June* laſt, Plaintiff, by Virtue of an Affidavit of Service of the Proceſs, ſworn before the Filazer's Deputy 19th *October* laſt, had that Day entered an Appearance. That the Affidavit was *coram non Judice*, and the Appearance void. On ſhewing Cauſe by the Plaintiff, it appeared that the Writ was ſerved in laſt *May*, returnable of *Eaſter* Term; that on Service, Defendant paid Part of the Debt and Coſts, and Plaintiff gave him Time to pay the Reſidue; and did not renew the Proceedings till after that Time expired, and Default made. *Per Cur':* The Application might have been made the firſt Day of the Term, it ſeems now to come too late. The Time was inlarged at Defendant's Requeſt, and now he would take Advantage of it. This looks like a Trick to evade Juſtice. The Appearance may be looked on as entred at the Return of the Writ (as recorded) *nunc pro tunc*, the Affidavit is not taken before a Perſon having proper Authority, but it is very late to inquire into that Matter now. Propoſal to pay the Reſidue of Debt and Coſts, including the Coſts of the Judgment, but not of the Motions, agreed to by Defendant; and thereupon Proceedings ſtayed. *Agar* for Defendant; *Bootle* for Plaintiff.

Ruſſell

Ruſſell *againſt* Martin.

CAPIAS returnable 15th *Trinity*, Plaintiff appeared for Defendant 15 *July*, gave Notice of a Declaration, and for Want of a Plea ſigned Judgment, and 10th *November* gave Notice of executing a Writ of Inquiry. 18th *November* Defendant moved to ſet aſide the Proceedings, inſiſting, that the Appearance was a Nullity. The Court thought, that the Application ought to have been made in the firſt Inſtance. By Conſent Judgment ſet aſide, without Coſts, Defendant to appear *nunc pro tunc*, plead an iſſuable Plea, and take Notice of Trial for the Sitting after Term. *Skinner* for Defendant; *Draper* for Plaintiff.

Wilcox *againſt* Sharpe, in Covenant. Mich. 22 Geo. 2.

DEfendant had pleaded three Pleas by Leave of the Court; Plaintiff afterwards got an Order to amend his Declaration, on Payment of Coſts, in the Taxation whereof the Coſts of the Pleas were not inſiſted on, or allowed. Plaintiff paid the Coſts taxed, gave a new Rule, and demanded a Plea; wereupon Defendant's Attorney re-delivered the former Pleas, without ſecond Application to Counſel or the Court. Plaintiff ſigned Judgment for Want of new Pleas. After an Amendment of a Declaration, Defendant has Liberty to plead *de novo*, that is, may do ſo if he has Occaſion, or thinks proper, but he is not obliged to vary his firſt Defence. Rule abſolute to ſet aſide the Judgment. *Willes* for Plaintiff; *Bootle* for Defendant.

Hodges *againſt* Charley, Spinſter, Executrix. Eaſter 22 Geo. 2.

JUdgment ſigned for Want of a Rejoinder. Time had been given by Plaintiff's to Defendant's Agent to rejoin till *Wedneſday*; on *Thurſday*, three Days after Rule out, Summons for Time ſerved held to be no Stay of Proceedings. Judgment regular ſet aſide on Payment of Coſts, and rejoining immediately. *Skinner* for Defendant; *Prime* for Plaintiff.

Cooke *againſt* Dethick and another, in Replevin. Eaſter 23 Geo. 2.

THE Plaintiff brought a *Re. fa. lo.* returnable in *Michaelmas* laſt, and a *Pone* returnable 8 *Hilary* laſt, whereon Defendants appeared, and Plaintiff delivered a Declaration 8th *February* laſt, intitled of *Michaelmas* inſtead of *Hilary* Term; and for Want of a Plea ſigned Jungment, and executed a Writ of Inquiry of Damages laſt Vacation, upon two Notices thereof, directed to Defendant *Dethick* and the other Defendant reſpectively, and both left at the Houſe of *Dethick*. Defendant inſiſted, that he was intitled to an Imparlance; but that Queſtion was not entered into. The Court held the Declaration intitled of *Michaelmas* Term to be null and void. Rule abſolute to ſet aſide the Judgment and Inquiry, Coſts to attend Event of Trial. *Poole* for Defendants; *Willes* for Plaintiff.

Turton *againſt* Riſhton. Trinity 24 Geo. 2.

ON an Iſſue of *Nul tiel Record* joined in an Action of Debt on Judgment, wherein Plaintiff had declared for 95 *l.* adjudged to him for Damages, occaſioned by Non-performance of Promiſes and Undertakings, &c. Plaintiff produced a Record of the Judgment to verify his Declaration, whereupon it was objected by *Prime* for Defendant, that the Record produced contains a Recovery of 95 *l.* Part for Damages, and the Reſidue for Coſts, and the Record alledged is a Recovery for Damages only. But the Objection was over-ruled, and Judgment given for the Plaintiff. The Declaration is in the ſettled conſtant Form of this Court, uſed in ſuch Declarations and in Writs of *Scire facias* to revive Judgments. After the Coſts incorporated with and made Part of the Damages, the Concluſion of the Judgment is, Which ſaid Damages amount in the Whole to 95 *l.* The Form of the *King's Bench* differs from that of this Court. The Precedents are uniform, and joined to the Reaſon of the Thing, muſt prevail. *Brown*'s *Modus intrandi* 157. *Officina Brevium* 283. *Bootle* for Plaintiff.

Dean *againſt* Unwin, one, &c.

MORE Money was charged on the Iſſue-Book than due, *viz.* 2*s.* 4*d.* for a ſecond Copy of the Declaration, which was of the ſame Term with the Iſſue; and Defendant refuſing to pay for the Iſſue, Plaintiff ſigned Judgment. The Court held it neceſſary that Defendant ſhould tender the Sum due, and for Want of ſuch Tender diſcharged the Rule to ſhew Cauſe why the Judgment ſhould not be ſet aſide. *Poole* for Plaintiff; *Hayward* for Defendant.

Ouldham and another *againſt* Lee. Trinity 24 & 25 Geo. 2.

JUdgment ſigned for Non-payment of Money due for an Iſſue-Book, tendered at the Houſe of Defendant's Attorney twice, at proper Hours, though not left there, held to be regular, and Rule to ſhew Cauſe why the Judgment ſhould not be ſet aſide diſcharged. *Prime* for Plaintiff; *Willes* for Defendant.

Bickerton *againſt* Lewis.

AFTER an Appearance entred for Defendant by Plaintiff, according to the Statute, the Clerk of Defendant's Agent took the Declaration out of the Office, and the Clerk of Plaintiff's Agent had Notice thereof; and, as the Clerk of Defendant's Agent ſwore, undertook not to ſign Judgment without calling for a Plea; notwithſtanding which, Judgment was ſigned without ſuch Calling. The Clerk of Plaintiff's Agent denied the Undertaking. The Court thought the Judgment not fair, though regular; and made the Rule abſolute for ſetting it aſide, on Payment of Coſts, and pleading the General Iſſue. *Draper* for Defendant; *Prime* for Plaintiff.

Eames *againſt* Jew. Mich. 25 Geo. 2.

OBjection, That no Plea was demanded in Writing. Anſwer, That a Demand of a Plea was indorſed on the Declaration delivered. Held, That ſuch Indorſement is inſufficient. A Plea muſt be demanded in Writing, after Declaration delivered, and Rule to plead given. Rule abſolute to ſet aſide the Judgment, with Coſts. *Willes* for Defendant; *Prime* for Plaintiff.

Hobbs *againſt* Greene. Eaſter 25 Geo. 2.

THIS was an Action of Treſpaſs for breaking and entring Plaintiff's Houſe, and taking and carrying away divers Quantities of China Ware, Earthen Ware and Linen, without ſetting forth the Particulars. Defendant ſuffered Judgment by Default; and after a Writ of Inquiry executed, and one Penny Damages found, Defendant moved in Arreſt of Judgment, and obtained a Rule to ſhew Cauſe; objecting, and though the Writ be ſhort, the Count ſhould explain the Particulars of the Goods. *Playter's* Caſe 5 *Coke* 34. *Piſces ſuos cepit*, held to be uncertain, neither Number nor Kind being mentioned. *Elphick* againſt *Acton*, 1 *Vent*. 114. in Trover *de diverſis Veſtiment'*, bad for Uncertainty. 1 *Vent*. 272, 329. 1 *Inſt*. 383. A. *Dec. Placitand*. 85, 86, 87. On ſhewing Cauſe it was anſwered, on the Part of Plaintiff, that in Treſpaſs or Trover there ſeems to be no Occaſion for great Certainty, becauſe Damages are to be given only for what is proved, as in an *Indebitat*. *Aſſumpſit*, and this Recovery may be pleaded in Bar to a new Action. *Bourn and Wife* againſt *Matair*, in Replevin, in *B. R.* Lord *Hardwicke* Ch. Juſt. *Hartford* againſt *Jones*, 2 *Salk*. 654. *Harriſon* againſt *Botomley*, *Trin*. 2 *Geo*. 1. *Kempton* againſt *Lampſter*, *Trin*. 1 *Geo*. 1. *Raſt*. 509. 1 *Keble* 184. 1 *Ld. Raymond* 588, &c. Rule diſcharged. *Prime* for Defendant; *Poole* for Plaintiff.

Whitehead, Adminiſtrator of Reveley, *againſt* Gale, Bail for Stewart. Trin. 25 & 26 Geo. 2.

RULE made abſolute to ſet aſide the final Judgment againſt Defendant *Stewart*, and all the ſubſequent Proceedings thereon againſt him and his Bail. Three Objections were made in Points of Irregularity; the firſt to the Judgment, That it was not ſigned till about two Months after the Death of *Reveley* the original Plaintiff; he died (as was admitted) in *September* 1747, and the Judgment was ſigned in *November* following. The ſecond, to the Revival of the Judgment *per Whitehead* the Adminiſtrator, which was by one *Scire facias* only, returned *Nichil habet*, (no new Perſon being called in on Defendant's Part.) The third, to the Award of Execution, not doquetted till after Defendant had appeared to the *Sci. fa.* which was returnable *Octabis Purificationis* 1748.

The Court did not think it neceſſary to give any Opinion as to the ſecond and third Objections, but as to the firſt, they held it to be good. The Law abominates Circuity and Expence; though the Judgment be erroneous in Point of Fact, yet it may alſo be deemed irregular, where the Application to ſet it aſide is recent, the Bail ought not to be put to an *Audita Querela*. The Judgment is a Nullity. Plaintiff, at the Time when it was given, could not come to demand it, and his Warrant of Attorney was extinct. *Prime* for Defendant; *Willes* and *Poole* for Plaintiff.

Machin *againſt* Delaval, Eſquire.

MOTION to ſet aſide Judgment, *&c.* entred by Warrant of Attorney, which Warrant Defendant inſiſted was void, as being given in Purſuance of an Uſurious Contract, which is not pleadable to a *Scire facias* on the Judgment. Plaintiff's Counſel obſerved, that the pretended Uſury is ſubſequent to the Judgment; and that Uſury for Continuance does not avoid the firſt Security, though a Penalty of treble the Value is given by Action, *&c.* The Court directed an Iſſue to try the controverted Fact, as to the Uſury. *Willes* and *Draper* for Defendant; *Prime* and *Poole* for Plaintiff.

Wood *againſt* Dodgſon. Trinity 26 & 27 Geo. 2.

RULE to ſhew Cauſe why Judgment ſhould not be ſet aſide, diſcharged. The Objections were, that Defendant had never been ſerved with Copy Proceſs, or Notice of Declaration. The Anſwer was, that Copy of the Proceſs had been tendered to Defendant at his Houſe, who refuſing to accept the ſame, it was left there; and that within 16 Days after ſuch Service of Proceſs, Notice of Declaration was left under the Door of ſaid Houſe, which was then empty and ſhut up. The Court thought the ſhutting up of the Houſe a Trick of Defendant's to avoid Proceſs, *&c.* By the General Rule 1 *Geo.* 2. Notice of Declaration is to be left at Defendant's laſt Place of Abode. *Poole* for Defendant; *Wilſon* for Plaintiff.

Bulling *againſt* Rogers. Mich. 27 Geo. 2.

DEfendant had moved in Arreſt of Judgment, and obtained the common Rule, which is, That the Entry of Judgment be ſtayed till the Court be moved on Behalf of the Plaintiff, and ſhall otherwiſe order; of which Motion Defendant is to have Notice.

Draper, for Plaintiff, admitted the Objection made in Point of Law, and prayed that an Entry be made on the Roll as the Adjudication of the Court, *That the Judgment be arreſted*, which was ordered. The Rule leaves the Action pending pleadable in Bar to a new Action; till the Entry prayed be made, Plaintiff cannot bring a Writ of Error, or maintain a new Action. *Poole* for Defendant.

Barnard one, *&c. againſt* Irwin. Trin. 28 Geo. 2.

ATtachment of Privilege returnable *Thurſday* next after 15 *Hil.* a Copy whereof was ſerved on Defendant before the Return, and on the Return Day (30 *January)* a Declaration was left in the Office *de bene eſſe*, and Notice to plead ſerved on Defendant; Defendant by the Statute having eight Days to appear after the Return of the Writ *(i. e.* exclusive of the Return Day) ſtayed till 7 *February* his laſt Day for appearing, and then entred his Appearance,

pearance, and pleaded a Tender after his Time for Pleading given by ſaid Notice, but before the Rule to plead expired; Plaintiff looked upon this Plea as a Nullity, becauſe pleaded after the *Time for Pleading* expired, and after the *Rule* to plead was out, and ſigned Judgment. Defendant inſiſted that this Plea ought to be received any Time before his *Time for appearing* expired, or any Time before Plaintiff was entitled to ſign Judgment for want of a Plea. Interlocutory Judgment ſet aſide, Coſts to attend the Event of the Cauſe. *Prime* for Defendant; *Willes* for Plaintiff.

Money, Goods, &c. brought into Court.

Anonymous. Mich. 6 Geo. 2.

PER *Cur'*: Money may be paid into Court upon the common Rule after Rule to plead is out, at any Time before Plea pleaded.

Knapton *againſt* Drew.

MOTION was made upon an affidavit that Defendant was dead; that 10 *l.* formerly paid into Court upon the common Rule, might be paid out to his Executors. Denied *per Cur'*.

Bryan, Executor, *againſt* Holloway. Hil. 6 Geo. 2.

UPON the common Motion to bring Principal, Intereſt and Coſts into Court, and refer to Prothonotary, the Court refuſed to grant the Rule, Plaintiff being an Executor; but ſaid, Plaintiff might be willing to accept the Debt and Coſts, and therefore they would grant a Rule to ſhew Cauſe.

Dixon *againſt* Allen. Trin. 7 & 8 G. 2.

DEfendant moved to pay 3 *l.* into Court in Debt for Rent, and plead *Nil debet*. *Per Cur'*: Be it ſo, it is common Practice. *Hawkins*.

Satterthwaite, and his Wife Adminiſtratrix, *againſt* Watford. Hil. 8 Geo. 2.

SKINNER moved to diſcharge a Rule to pay Money into Court, which was drawn up in common Form, without diſtinguiſhing that Plaintiffs ſued as Adminiſtrators; and the Motion was granted.

Savage *againſt* Francklyn.

DEfendant brought Money into Court upon the common Rule (Plaintiff refuſing to accept the ſame) and pleaded the General Iſſue. Plaintiff joined and delivered the Iſſue Book, with Notice of Trial: Plaintiff did not proceed farther, but moved to have the Money out of Court, with Coſts to the Time of bringing the Money into Court, which was ordered upon Plaintiff's Payment of coſts to Defendant ſubſequent to the Time of bringing the Money into Court.

Anonymous.

MONEY was paid into Court by Defendant upon the common Rule: Plaintiff proceeded to Trial, and recovered a ſmaller Sum than that paid into Court. Moved in the *Treaſury*, that Defendant might have the Money out of Court towards his Coſts, and ordered, upon hearing the Attornies on both Sides.

Crockay *againſt* Martin. Eaſter 9 Geo. 2.

A Sum of money having been paid into Court by Defendant upon the common Rule; and Plaintiff dying before Trial, Defendant moved to have the Money paid back to him; but the Court were of Opinion that the Money being paid into Court for Plaintiff's Uſe, ought not to be paid back to Defendant. Vide *Knapton* againſt *Drew*. *Mich.* 6 *Geo.* 2. The Court have not yet gone ſo far as to order Payment to Plaintiff's Executor, but it ſeems reaſonable if the Executor be willing to accept the Money paid into Court; and after Trial it is plain Executor is intitled to the Money paid into Court, though a ſmaller Sum be recovered; had Plaintiff lived, and refuſed to accept the Sum paid into Court, and been nonſuited upon the Trial, yet Defendant could not have the Money back out of Court, Plaintiff being intitled thereto in all Events, as determined in *Lane* and *Wilkinſon* in the *Treaſury*. *Mich.* 1 *Geo.* 2.

Cooke *againſt* Holgate. Trin. 10 G. 2.

In Trover. *DRAPER* moved for Defendant to bring the Goods ſpecified in the Declaration into Court; but the Goods being ponderous the Motion was denied. *Per Cur':* Let the Plaintiff ſhew Cauſe why he ſhould not conſent to accept the Goods and Coſts.

Straphon *againſt* Thompſon. Hil. 11 Geo. 2.

A Rule to pay 1 *l.* 11 *s.* 6 *d.* into Court was diſcharged, the Money not having been paid in till after Plea pleaded. *Skinner* for Plaintiff; *Eyre* for Defendant.

Burgeſs *againſt* Pallamounter. Mich. 12 Geo. 2.

BELFIELD moved to ſet aſide regular Judgment on Payment of Coſts, pleading General Iſſue, *&c.* and aſked for Leave to pay Money into Court on the common Rule. Denied.

Per Cur': Money cannot be ſo brought in after regular Judgment.

White *againſt* Daman.

In Debt for Rent. RULE to ſhew Cauſe why Defendant ſhould not bring Money into Court upon the common Rule, and plead *Nil debet* made abſolute. *Belſield* for Plaintiff; *Draper* for Defendant. The ſame Caſe *Dixon* againſt *Allen*, *Trin.* 7 & 8 *Geo.* 2. *Note*; The Practice is the ſame in Covenant for Non-payment of Rent.

Davies *againſt* Manſell, Bart. Hill. 13 Geo. 2.

DEFENDANT paid Money into Court upon the common Rule, which Plaintiff refuſed to accept, and delivered an Iſſue with Notice of Trial. Plaintiff afterwards declined proceeding to Trial, and moved that he might have the Money with Coſts to the Time of the Rule for Payment into Court, conſenting to allow Defendant ſubſequent Coſts, and obtained a Rule to ſhew Cauſe, which was made abſolute on hearing Council on both Sides. *Prime* for Plaintiff; *Hayward* for Defendant. Vide *Savage* againſt *Franklin*, *Hil.* 8 *Geo.* 2.

Swan *againſt* Freeman.

DEFENDANT laſt Term paid 2 *l.* 12 *s.* into Court upon the common Rule, which Plaintiff refuſed to accept, and joined Iſſue. This Term Defendant applies to increaſe the Sum, and obtains a Rule to ſhew Cauſe why the Common Rule not be altered, and the Sum made 7 *l.* 12 *s.* inſtead of 2 *l.* 12 *s.* The Rule to ſhew Cauſe was diſcharged. It is a Subterfuge to try if Plaintiff will accept a ſmaller Sum than due, and if not, to pay more Money into Court, which cannot be done after Iſſue joined. *Bootle* for Plaintiff; *Agar* for Defendant.

Scarrall *againſt* Horton. Mich. 14 Geo. 2.

DEFENDANT paid Money into Court upon the Common Rule, which Plaintiff accepted, and after the Coſts taxed and demanded, moved for an Attachment againſt Defendant for Non-payment. The Court refuſed the Rule; becauſe, as the Words of the Common Rule ſtand at preſent, Defendant is not ordered to pay the Coſts; but granted a Rule upon Defendant to ſhew Cauſe why he ſhould not pay Coſts; and declared, that the Form of the Common Rule ſhould be altered, and made obligatory upon Defendants to pay Coſts. *Agar* for Plaintiff.

N.B. A new Form hath been ſince ſettled accordingly.

Peirce *againſt* Sanders. Eaſter 14 Geo. 2.

THIS was an Action of Debt upon a Bill penal for 2*l.* 2*s.* and in the Declaration a Count was added on a *Mutuatus.* Defendant took a Rule from Secondary *Paramor*, as a Rule of Courſe, to pay 2 *l.* 2 *s.* into Court, and pleaded *Solvit ad diem* to the Bill penal, and *Nil debet* to the *Mutuatus.* Plaintiff refuſed to accept the 2*l.* 2*s.* went on to Trial, and recovered 2*l.* 2*s.* and no more. Whereupon he applied to the Court to ſet aſide the Rule for Payment of Money into Court; and a Rule to ſhew Cauſe was granted, which, on ſhewing Cauſe, was diſcharged. *Per Cur':* The Rule to bring Money into Court, in this Caſe, is not ſupported by any Precedent, and is certainly wrong; but Plaintiff ſhould have applied ſooner; after a Verdict in Defendant's Favour he comes too late. *Huſſey* for Plaintiff; *Draper* for Defendant.

Fuller *againſt* Swan. Eaſter 14 Geo. 2.

AFTER the Plaintiff's Death, a Motion was made that his Executor might pay Defendant a Sum of Money, which the Prothonotary had reported to have been levied by Plaintiff

more

more than was due, and a Rule granted to ſhew Cauſe; but was afterwards diſcharged. *Draper* for the Executors; *Willes* for Defendant.

Royden *againſt* Batty, in Trover. Mich. 15 Geo. 2.

DEFENDANT obtained a Rule for Plaintiff to ſhew Cauſe why, on Defendant's bringing four new wrought Dimothy Bed-Curtains, Vallance and Baſes, being the Goods ſpecified in the Declaration, into Court, and Payment of Coſts, Proceedings ſhould not be ſtayed; it appeared on the Part of the Plaintiff that the Curtains had been cut, altered and ſcowred, and thereby leſſened in value. *Per Cur'*: Theſe Sort of Rules are diſcretionary; and in this Caſe it is not reaſonable to oblige Plaintiff to take his Goods again, altered as they appear to be. Let the Rule be diſcharged. *Prime* for Defendant; *Willes* for Plaintiff.

Walnouth *againſt* Houghton. Hilary 15 Geo. 2.

THIS was an Action of Covenant, in which a Breach was aſſigned in a Sum certain (11 *l.*) for not dreſſing Corn. *Agar*, for Defendant, moved to bring 11 *l.* into Court upon the Common Rule; to which *Draper* for Plaintiff conſented, admitting that this Breach is aſſigned with equal Certainty as for Non-payment of Rent.

Fiſher *againſt* Kitchingman. Eaſter 16 Geo. 2.

JUDGMENT was arreſted, and conſequently no Coſts were to be paid on either Side. The Court ordered 20 *l.* brought into Court by Defendant, to be paid out to Plaintiff, *Skinner* and *Bootle* for Plaintiff; *Agar* for Defendant.

Vane *againſt* Mechell. Hilary 17 Geo. 2.

MONEY was paid into Court upon the Common Rule, which Plaintiff refuſed to accept, and delivered an iſſue; but afterwards changed his Mind, and applied to the Court for

Leave to take the Money out of Court, with Coſts to the Time of bringing it in; which was ordered, upon Payment of ſubſequent Coſts to Defendant. *Skinner* for Plaintiff; *Urlin* for Defendant.

Atkins *againſt* Taylor. Hilary 18 Geo. 2.

ACTION of Debt brought on a Bond, conditioned for a Bailiff's Good Behaviour, & *inter alia*, for his paying Money collected for the Sheriff's Uſe. Defendant obtained a Rule to ſhew Cauſe why he ſhould not have Leave to bring Money into Court on the Common Rule, as to the Sums collected, and to plead Performance as to the Reſt of the Condition. The Rule was diſcharged, as contrary to the Courſe of the Court. *Prime* for Defendant; *Skinner* for Plaintiff.

Yeoman *againſt* Roſs. Eaſter 19 Geo. 2.

A Rule to pay Money into Court in an action of Debt for the Penalty of a Charter-Party, diſcharged, as contrary to the Courſe of the Court. *Vide Atkins* againſt *Taylor*, *Hil.* 18 *Geo.* 2. *Willes* for Plaintiff; *Eyne* for Defendant.

Tidmaſh *againſt* Smith, in Covenant. Trinity 21 Geo. 2.

AFTER a regular Judgment ſet aſide on the uſual Terms of pleading the General Iſſue, *&c.* Defendant applied for Leave to bring Money into Court on the Common Rule; denied, and Rule to ſhew Cauſe diſcharged. After a regular Judgment, the Court never give Leave to bring in Money which comes in lieu of a Tender. *Draper* for Defendant; *Agar* for Plaintiff.

Hellier *againſt* Hallett, Widow, Adminiſtratrix, in Caſe, nine Counts. Trinity 21 & 22 Geo. 2.

RULE made abſolute, giving Defendant Leave to pay 5 *l.* 5 *s.* into Court on the Common Rule, with Reſpect to the 7th and 8th Counts; and as to the Reſt, to plead the General Iſſue, the Statute of Limitation, and a Set-off. This is ſimilar to Covenant for Non-payment of Rent, where other Breaches are alſo aſſigned. If Plaintiff takes the Money out of Court, he muſt have Coſts of the Whole to that Time. *Fawcett* againſt *Rowles*, *Mich.* 21 *Geo.* 2. The Court will not give Defendant Leave to pay Money into Court, and plead as to ſome of the Counts, and demur to the Reſt. *James* againſt *Hoſey*, *Mich.* 2 *Geo* 2. in Sir *George Cooke*'s printed *Caſes of Practice*. *Prime* for Plaintiff; *Draper* for Defendant.

Green, Executor, *againſt* Beaton, in Covenant. Mich. 22 Geo. 2.

BREACH aſſigned for Non-payment of Rent. Defendant had obtained the Common Rule to pay 79 *l.* 1 *s.* into Court, and afterwards moved to add 1 *l.* 4 *s.* But it appearing that Defendant had pleaded, and that no Money was yet brought into Court, the Rule was diſcharged. *Draper* for Defendant; *Agar* for Plaintiff.

Wright *againſt* Benington. Hilary 22 Geo. 2.

IN Debt for Penalty of a Bond, conditioned for Performance of Covenants in an Indenture of Leaſe; Breach aſſigned for Non-payment of 10 *l.* for Half a Year's Rent. Motion to bring 10 *l.* into Court on the Common Rule, denied. This has never been done in Debt, though in Covenant it may. By the 8 & 9 *W.* 3. the Judgment in Covenant is to ſtand, and *Sci. fa.* may be ſued out for ſubſequent Breaches; but that Statute does not extend to this Caſe. In Debt on Bond for Payment of Money by Inſtalments, Money cannot be brought in on the Common Rule. *Eaſter* 19 *Geo.* 2. *Yeoman* againſt *Roſs and others*, in Debt for the

Penalty of a Charter-Party, a Motion to bring Money into Court denied. On ſuffering Plaintiff to enter Judgment, and Payment of 10*l.* and Coſts, Proceedings ſtayed. *Agar* for Defendant; *Poole* for Plaintiff.

Auſtin *againſt* Roſs, Executor. Hil. 23 Geo. 2.

RULE abſolute, giving Defendant Leave to bring Money into Court on the Terms of the Common Rule, and plead *Plene Adminiſtravit,* as well as the General Iſſue to the Whole. *Draper* for Defendant; *Wynne* for Plaintiff.

Bate, Aſſignee, *againſt* Crane, in Covenant. Eaſter 24 Geo. 2.

TWO Breaches were aſſigned, one for Non-payment of Rent, the other for not uſing the Land in a Courſe of Good Huſbandry. Defendant laſt Term paid Money into Court on the Common Rule, as to the firſt Breach, which Plaintiff then refuſing to accept, delivered an Iſſue with Notice of Trial for laſt Aſſizes, and afterwards countermanded ſuch Notice. Defendant this Term ſerved the Common Rule to enter the Iſſue on Record; whereupon Plaintiff applied to the Court, and had Leave to take the Money out of Court, with Coſts to the Time of bringing it in, he firſt paying ſubſequent Coſts to Defendant out of the Money in Court, if ſufficient, and if not, Plaintiff to make good the Deficiency, and thereupon Proceedings to ſtay. *Prime* for Plaintiff; *Bootle* for Defendant.

Emes, Widow, Executrix, *againſt* Jew. Hilary 25 Geo. 2.

THIS was an Action on the Caſe, on ſeveral Undertakings and Promiſes, the laſt Count for Money received for Plaintiff's Uſe as Executrix. Defendant moved, and obtained a Rule to ſhew Cauſe why he ſhould not have Leave to pay Money into Court on the Common Rule, as to the laſt Count, and why, if Plaintiff ſhall not recover more Money than the Sum paid into Court on that Count, and ſhall not recover any thing on the other

Counts, why ſhe ſhould not pay Defendant's Coſts; it appearing that Plaintiff might, as to the fourth Count, have brought the Action in her own Right. On ſhewing Cauſe, a Rule was entred into by Conſent, That Plaintiff do accept the Money offered, as to the laſt Count, with Coſts hitherto as to it; and that the laſt Count be ſtruck out of the Declaration. *Willes* for Defendant; *Poole* for Plaintiff.

Rogers Aſſignee *againſt* Stanford Aſſignee, in Covenant broken. Eaſt. 27 Geo. 2.

RULE to bring Money into Court upon the Breach aſſigned for Nonpayment of Rent made laſt *Trinity* Term; Plaintiff afterwards died (*viz.* in *July* laſt) before any Thing further done. *Poole* moved on the Part of *Elizabeth* the Wife of *Armſtead Parker* Eſquire, Plaintiff's Executrix, for Leave to take the Money out of Court, with Coſts to the Time it was paid in, which Plaintiff in his Life Time was intitled to. *Draper* for Defendant oppoſed the Motion; he objected not to the Money's being paid out of Court to Plaintiff's Executrix, but to Payment of Coſts; inſiſting that the Action was abated by Plaintiff's Death (as it certainly was); but when it came to be conſidered, That if the Executrix took nothing by this Motion, ſhe and her Huſband would bring a new Action for the ſame Thing; and then Defendant muſt apply to have the Money now in Court transferrſed to a Payment the new Action, and muſt ſubmit to pay Coſts therein; Defendant's Counſel waived his Objection, and a Rule was made by Conſent, That the Money be paid out of Court to Plaintiff's Executrix with ſuch Coſts as Plaintiff would have been intitled to, if he had accepted the Money at firſt; and that no Action ſhould be brought by the Executrix for the ſame Cauſe for which the former Action was brought by the Teſtator.

Moſs Adminiſtrator *againſt* Hardy. Trin. 27 & 28 Geo. 2.

ACTION on Bond to a Truſtee, to ſecure an Annuity by Inſtalments to Defendant's Wife. Rule abſolute to ſtay Proceedings on Payment of 3 *l.* (the only Inſtalment due) and Coſts. *Prime* for Defendant; *Willes* for Plaintiff.

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Davey Baronet *againſt* Martyn Aſſignee, *&c.* in Covenant broken. Hil. 28 Geo. 2.

DEfendant obtained a Rule for Plaintiff to ſhew Cauſe, why he ſhould not have Leave to bring into Court, on the common Rule, 40*s.* in lieu of each Heriot demanded by Plaintiff; but on ſhewing Cauſe the Covenant appeared to be, to render to Plaintiff the beſt live Beaſt for a Heriot, or pay him 4*s.* in lieu thereof, at Plaintiff's Election. Rule diſcharged. *Prime* for Defendant; *Draper* for Plaintiff.

Wright Executor *againſt* Swayne, Eſquire, in Debt on Bond.

UPON the common Motion by Defendant to bring Principal, Intereſt and Coſts into Court, purſuant to the Statute; It was objected by Plaintiff's Counſel, that Plaintiff being an Executor, this Caſe is not within the Statute. *Bryan* Executor againſt *Holloway*, *Hil.* 6 *Geo.* 2. was quoted to ſhew that ſuch a Notion was once entertained. But *per Cur'*: The Words of the Statute are general and extend to all Actions on Bond, brought by Executors as well as other Perſons. Rule abſolute to bring Principal, Intereſt and Coſts into Court, and thereupon Proceedings to be ſtayed. *Willes* for Defendant; *Prime* for Plaintiff.

Phillips *againſt* Barker. Hil. 29 Geo. 2.

RULE abſolute for Leave to withdraw Plea of General Iſſue, on Payment of Coſts, pay 2 *l.* 2 *s.* into Court on common Rule, and plead the ſame Plea again; Defendant taking Notice of Trial for the Sitting after Term in *Middleſex*. No Delay has been occaſioned to Plaintiff by Defendant's omitting to bring Money into Court before Plea pleaded. *Poole* for Defendant; *Willes* for Plaintiff.

Mutual Debts.

Brown *againſt* Holyoak. Eaſt. 7 Geo. 2.

THIS was an Action of Debt for Rent upon a Parol Leaſe: Defendant had by his Plea ſet off a Debt by Simple Contract; to which Plaintiff demurr'd. *Per Cur'*: A Debt of an inferior Nature cannot be ſet off againſt a ſuperior Demand *. Judgment for the Plaintiff. Debt for Rent is equal to an Action upon a Bond. *Eyre* for Plaintiff; *Chapple* for Defendant.

Gower and his Wife *againſt* Hunt. Mich. 8 Geo. 2.

THIS was an Action of Covenant brought upon Indenture for Non-payment of Rent. Defendant pleaded *Non eſt factum*, and gave Notice upon his Plea to ſet off ſeveral Sums due to him upon Covenants in the ſame Deed for ſpurring up Land at a certain Sum *per* Acre: The Queſtion was, Whether upon this Plea Defendant could give in Evidence his Demand, by Virtue of the late Act of Parliament. Mr. Juſtice *Denton*, who tried the Cauſe at the laſt Aſſizes for *Suffolk*, being of Opinion he could not upon this Iſſue. It was urged for Defendant, that his Debt is a certain Demand, for which he might have brought an Action of Debt, and that the Debts are mutual, of the ſame Nature and Degree, and both Debts ariſe upon the ſame Contract, that the Plea is a General Iſſue, and that thereupon a Bond might have been ſet off againſt a Bond; and therefore this is a Caſe within the Nature and Meaning of the Act. On the other Side, it was inſiſted, that Defendant's Plea is intirely inconſiſtent; he denies the Deed, and at the ſame Time makes a Demand under it; he might have pleaded a General Iſſue without denying the Deed, or might have pleaded the Matter ſpecially. Court, upon Motions to plead double, never give Leave to plead contradictory Matters. *Cur' adviſ'*.

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* The Law is ſince altered by Act of Parliament.

Gower and his Wife *againſt* Hunt. Eaſter 8 Geo. 2.

PER *Cur'*: The Evidence offered to be given by Defendant, ought to have been received at the Trial, being to ſet off a certain Debt of equal Degree with the Plaintiff's Demand; the General Iſſue muſt be underſtood to be any General Iſſue. A new Trial was ordered. *Vide* this Caſe in *Michaelmas* Term laſt.

Notice and Countermand.

Bartholomew, Un' &c. *againſt* Goulding. Mich. 6 Geo. 2.

PLaintiff having appeared for Defendant purſuant to the late Act of Parliament, left a Declaration in the Office in *Eaſter* Term, and in *Trinity* Term gave Notice thereof to Defendant, and for want of a Plea ſigned Judgment. Defendant applied to the Court within *Trinity* Term to ſet aſide the Judgment, the Nature of the Action being omitted in the Notice, and on hearing Counſel on both Sides, the Judgment was ſet aſide. In *Michaelmas* Term following Plaintiff gave new Notice of the Declaration, and ſigned a ſecond Judgment. The Defendant applied again to the Court to ſet that Judgment aſide, inſiſting that the Declaration was well delivered from the Time of ſerving the ſecond Notice only, and that the Writ being returnable in *Eaſter* Term laſt, the Declaration was delivered too late, and the Plaintiff muſt begin again; and the Court were of that Opinion, and ordered the ſecond Judgment to be ſet aſide.

Geale *againſt* Chapman. Eaſter 6 Geo. 2.

THE Proceedings had ſtaid for Twelve Months, and Plaintiff afterwards, *viz.* on the Day before the firſt Day of laſt Term, gave Notice of Trial for the laſt Aſſizes. Defendant moved to ſet aſide the Verdict for want of a Term's Notice, and obtained a Rule *Niſi*, which was afterwards made abſolute by the Court on hearing Counſel on both Sides, becauſe the Notice not being given before the Eſſoin-Day of laſt Term was inſufficient.

Alſop *againſt* Bagott.

A Queſtion aroſe upon the late Act of Parliament touching Notice to be given upon the Copy of Proceſs, Whether the Day to be expreſſed in the Notice muſt be the Eſſoin-Day or the Appearance-Day. In this Caſe Notice was given for the Appearance-Day, which the Court held to be good. This Motion was after Judgment; but the Merits not having been tried, a Rule was made to ſhew Cauſe why the Judgment ſhould not be ſet aſide upon Payment of Coſts, but no Cauſe was ever ſhewn. (*Aliter poſtea.*)

Boyes *againſt* Twiſt, and others. Trin. 6 & 7 Geo. 2.

NOTICE of Trial for the laſt Sitting within *Eaſter* Term was continued till the Sitting after that Term, and afterwards continued till the firſt Sitting within this Term. Defendant urged, that the Notice could not be regularly continued a ſecond Time, and having made no Defence, moved for a new Trial, and obtained a Rule *Niſi*. Upon ſhewing Cauſe, Court was of Opinion that Plaintiff cannot continue his Notice a ſecond Time, that is, he ſhall give ſhort Notice but once; but this Notice is objected to only becauſe it is a Continuance, the full Time is given by it; and had the Word *continue* been out, Defendant agrees the Notice would be good; that Word ſhall not vitiate the Notice, the full Time being given, eſpecially as it is ſworn by *Jones* (Plaintiff's Attorney) that *Townſend* (Defendant's Attorney) requeſted him after laſt Term to continue the Notice till this Term. Rule diſcharged, but by Conſent Verdict was ſet aſide upon Payment of Coſts, giving Judgment in Debt, and taking Notice of Trial within Term. *Chapple* and *Comyns* for Plaintiff; *Eyre* for Defendant.

Alſop *againſt* Nichols.

A Queſtion did ariſe, Whether the day to be inſerted in the *Engliſh* Notice to appear upon Proceſs purſuant to the late Act of Parliament, ſhould be the Eſſoin-Day of the Return, or the *quarto die poſt*. Court held that it muſt be the Eſſoin-Day, which in this Court is the Return-Day, and not the *quarto die poſt*, which is only a Day of Grace. *Hawkins* cited ſeveral Caſes to this Purpoſe. *Dyer* 269. *pl.* 21. *Co. Litt.* 135. *Finch* 427. *Carth.* 172. 3 *Syderſin* 229. *Salk.* 626. *pl.* 8. *Harvey* and *Broad*, *pl.* 9. *Davis* and *Salter*.

Langſtaffe *againſt* Lamb. Mich. 7 Geo. 2.

NOTICE of the Execution of a Writ of Inquiry of Damages was given for a particular Day, but no Hour was mentioned. Defendant moved to ſet it aſide, and obtained a Rule *Niſi*. Plaintiff, on ſhewing Cauſe, ſwore that Defendant after the Notice given had declared he would make no Defence. Court was of Opinion, that this was not ſufficient to make the Notice good, and therefore ſet aſide the Inquiry, but without Coſts.

Kingdon *againſt* Horn and Froſt.

THIS Action was brought againſt Defendants upon a joint promiſſory Note. Appearance was entred by Plaintiff upon the Act of Parliament, and Notice of the Declaration given to one of the Defendants only. *Per Cur'*: Held to be bad, and Proceedings ſtaid. *Glyde* for Defendants; *Wright* for Plaintiff.

Jenner *againſt* Oatridge. Hil. 7 Geo. 2.

BAYNES moved to ſtay the Proceedings, the Writ being returnable in eight Days from St. *Hilary*, and the Notice being to appear on *Sunday January* 20. *Per Cur'*: *The Sunday is the true Day of the Return*, and therefore it is as it ought to be.

Anonymous.

A Motion was made in the Treaſury to amend a Notice to ſet off a Debt according to the late of Parliament, but the Judges declared it could not be done. Notices of this Kind are in this like Notices of Trial, *&c.* which never were amended by the Court.

Green *againſt* Watkins.

UPON hearing Council on both Sides, and after taking Time to conſider, the Court were of Opinion that a Notice to appear on *Monday January* 21. as the Return-Day of *Oct. Hil.* was bad; it ought to have been to appear on the 20th, which, although *it be Sunday, is the true Day of the Return. Girdler* for Plaintiff; *Glyde* for Defendant.

Jenner *againſt* Williamſon.

SAME Determination. *Eyre* for Defendant; *Corbett* for Plaintiff.

Paul *againſt* Gledhill.

JUDGMENT was ſigned in *Eaſter* Term the 4th of his preſent Majeſty, and a Writ of Enquiry of Damage executed laſt *Michaelmas* Vacation on eight Days Notice. *Birch* for Defendant moved to ſet it aſide for want of a Term's Notice; Plaintiff having lain ſtill above 12 Months; and upon hearing *Chapple* and *Eyre* for the Plaintiff, the Court ſet aſide the Writ of Inquiry for want of due Notice. In all Caſes where Proceedings have ſtaid above 12 Months, whether as to Pleadings or Notices, a whole Term's Notice muſt be given.

Hannaford *againſt* Holman. Eaſter 7 Geo. 2.

NOTICE of the Declaration being left in the Office was without Date, and Notice of the Execution of the Writ of Inquiry was at Ten in the Forenoon, or as ſoon after as the Sheriff could attend. The Court, upon hearing Council on both Sides, held both Notices bad, and therefore ſet aſide the Judgment and Inquiry. *Chapple* for Plaintiff; *Eyre* for Defendant.

Lloyd *againſt* Beeſton.

THE Writ was returnable *quinden' Paſcha* ſerved with Notice to appear on *April* 28. which was *Sunday*. *Chapple* moved to ſtay Proceedings; but *per Cur'*, the Day in the Notice is the true Day of Return. No Rule.

Foſter *againſt* Smales.

THE Notice of the Time of executing the Inquiry was between Ten and Two, which the Court thought too uncertain, and made a Rule to ſhew Cauſe why the Inquiry ſhould not be ſet aſide. *Urlin.*

Williams *againſt* Jones.

THIS was an Action of Aſſault and Battery, to which Defendant had pleaded *ſon Aſſault Demeſne*; whereto Plaintiff replied *De Injuria ſua propria*, and Iſſue was joined in *Michaelmas* Term laſt. Plaintiff gave Notice of Trial for the Sitting after *Michaelmas* Term, and countermanded, and again for the ſecond Sitting within *Hilary* Term, and countermanded; whereupon Defendant gave a Rule to enter the Iſſue, and tried the Cauſe by Proviſo the Sitting after *Hilary* Term, and the Plaintiff not appearing at the Trial was nonſuited. Plaintiff moved to ſet aſide the Nonſuit as irregular, ſuggeſting that Defendant could not regularly try the Cauſe by Proviſo till *Eaſter* Term; but that being ruled againſt him, he prayed the Nonſuit might be ſet aſide upon Payment of Coſts; but the Proof being upon the Defendant, and his Witneſſes having been examined at the Trial, Court refuſed to make any Rule.

Jemmett *againſt* Voyer. Trin. 7 & 8 Geo. 2.

PROCESS was ſerved *May* 14. and Declaration delivered *June* 8. Defendant moved to ſtay the Proceedings, the true Day of Return, which was *quinque Paſchæ May* 19. not being inſerted in the Notice, but the Day after. The Queſtion was, Whether Defendant was too late to move to ſtay the Proceedings. Court were of Opinion, that as he came before interlocutory Judgment ſigned, he came in due Time, and made a Rule to ſtay Proceedings. *Birch* for Defendant; *Baynes* for Plaintiff.

Dixon *againſt* Fenner.

IN an Action of Debt upon a Bond, Defendant pleads Payment. Plaintiff replies, and tenders an Iſſue. Defendant demurs. *Chapple* moved after the laſt Paper-Day to put the Cauſe into the Paper to be argued, and obtained a Rule. Upon the Day of Argument *Birch* objected, that the Cauſe was irregularly ſet down, and the Plaintiff had given Notice of Trial for the Sitting after Term. Court diſcharged the Rule for ſetting down the Cauſe on Payment of Coſts; Defendant conſenting that the Plaintiff might proceed to Trial according to Notice at the Sitting after Term.

Robinſon *againſt* Philips.

THE Queſtion was, Whether Notice of executing the Inquiry between Eleven and Two was good. *Cur'*: We have held it to be confined within two Hours at moſt, and therefore the Notice is irregular. Shew Cauſe.

Gorman *againſt* Boyle. Mich. 8 Geo. 2.

EIGHT Days Notice of Trial was held to be bad, and the Verdict obtained by Plaintiff without Defence was ſet aſide, the Place of Defendant's Abode being in *Ireland*.

Price *againſt* Bambridge, an Attorney.

NOTICE of the Execution of the Writ of Inquiry was twice continued. Court held the ſecond Continuance bad. A Notice can be continued but once. The firſt Continuance was alſo bad, not being ſerved till within an Hour before the Time appointed for the Execution of the Writ of Inquiry; it ſhould have been ſerved two Days before. *Chapple* for Defendant; *Skinner* for Plaintiff.

Squire *againſt* Almond. Hil. 8 Geo. 2.

NOTICE was given to execute a Writ of Inquiry of Damages at the Sheriff's Office in *Northampton* between the Hours of Ten and Two. Upon hearing Counſel on both Sides, the Court was of Opinion that the Notice was bad both as to Place and Time. It ſhould have been expreſſed at what Sign, or whoſe Houſe the Sheriff's Office was kept, and the Time is too extenſive, which ought to be confined to two Hours. The Writ of Inquiry and Inquiſition taken thereupon were ſet aſide. *Skinner* for Defendant; *Eyre* for Plaintiff.

Jacob *againſt* Marſh. Eaſt. 8 Geo. 2.

PROPER Notice of Trial was given and countermanded. A ſecond Notice of Trial was given, but therein the Name of the Cauſe was omitted. The ſecond Notice was afterwards continued, and the Name of the Cauſe inſerted in the Continuance; and thereupon the Cauſe was tried. The Court was of Opinion, that the ſecond Notice being bad, could not be helped by the Continuance, and ſet aſide the Verdict.

Chanklin *againſt* J'Anſon.

CHAPPLE for Defendant obtained a Rule to ſhew Cauſe why Proceedings ſhould not be ſtaid, upon an Affidavit that the Proceſs ſerved was returnable on one Day, and the Notice to appear was at another; but the Copy of the Proceſs with Notice ſerved was not annexed to the Affidavit. *Darnal* for Plaintiff inſiſted, that whenever Defendant will take Advantage of ſuch Miſtake, he muſt produce the Copy ſerved, and ſwear he was ſerved with no other; and of that Opinion was the Court, and diſcharged the Rule.

Clapham and others.

PROCESS was againſt one *Clapham*, and the Notice was directed to *Cliſham*, which was held irregular, and the Proceedings were ſtaid. *Belfield* for Defendant; *Eyre* for Plaintiff.

Goodright, on the Demiſe of Hawkey, *againſt* Hoblyn.

Trin. 8 & 9 Geo. 2.

THIS Action was laid in *Cornwall*. Notice of Trial was given in Town and countermanded in the Country three Days before the Commiſſion-Day of the Aſſizes. The Queſtion was, Whether this was a good Countermand to prevent Coſts for not proceeding to Trial, Defendant having ſent a Witneſs from *London*, who was got as far as *Exeter* before he heard of the Countermand. *Per Cur'*: Notice of Trial cannot be given in the Country, but may be well contermanded there; and though by that Practice Defendant is put to an Inconvenience in this Caſe, yet the Inconveniencies which muſt neceſſarily accrue from the contrary Practice would be much greater. The Countermand would have been good if given but two Days before the Commiſſion-Day. *Eyre* for Plaintiff; *Belfield* for Defendant.

Taylor *againſt* Sherman.

HELD *per Cur'*, that in a Notice of a Declaration being left in the Office it is not ſufficient to ſay that the Plaintiff declares upon a Note of Hand; the Nature of the Action muſt be expreſſed, as Debt, Caſe, *&c. Belfield* for Defendant; *Eyre* for Plaintiff.

Swaile, an Attorney, *againſt* Leaver, in Middleſex.
Mich. 9 Geo. 2.

THE Defendant lived above 40 Miles from *London*. Plaintiff gave fourteen Days Notice of Trial, and countermanded the ſame; afterwards Defendant tried the Cauſe by Proviſo upon eight Days Notice, and Plaintiff not appearing was nonſuited. *Wynne* and *Eyre* for Plaintiff moved to ſet aſide the Nonſuit, the Notice of Trial by Proviſo being irregular; and upon hearing *Wright* for the Defendant the *Non-pros* was ſet aſide, Defendant being obliged to give the ſame Notice of Trial as required from Plaintiff. It was at firſt doubted whether the Plaintiff not appearing at the Trial was not abſolutely out of Court, and could not complain of the Nonſuit; but it was held that the Notice being ill, muſt be looked upon as no Notice at all, and conſequently he could not appear at the Trial, and the Inconvenience would be great if a Nonſuit obtained without any Notice could not be complained of. It was obſerved by *Eyre*, that though at *Niſi prius* Plaintiff be out of Court, he hath a Day in Bank here, *viz.* the Return of the Writ of *Habeas Corpora Jurator'*.

Le Mark *againſt* Newnham. Trin. 10 Geo. 2.

NOTICE was given of the Execution of a Writ of Inquiry of Damages at the *Three Tons* in *Brookſtreet*, without ſaying in *Holborn*, or elſewhere, though there are three Streets of that Name in *Com' Midd'*. *Wright* moved to ſet aſide the Inquiry for this Defect in the Notice. It was urged by *Eyre* for Plaintiff, that the *Three Tons* in *Brookſtreet*, where the Sheriff of *Middleſex* conſtantly executes Writs of Inquiry in Vacation Time, is a well-known Place to every Practiſer; but *per Cur'*, the Notice is not ſo certain as it ought to be, the Inquiry and Inquiſition thereupon taken muſt be ſet aſide. *Wright* for Defendant, who cited *Squire* againſt *Almond*, *Hil.* 8 *Geo.* 2.

Edwards *againſt* Edwards.

NOTICE of a Declaration left in the Office in an Action upon a promiſſory Note (without ſaying in Treſpaſs on the Caſe) held inſufficient Notice. *Booth* for Defendant; *Chapple* for Plaintiff.

Lee *againſt* Bradford. Mich. 10 Geo. 2.

DEfendant appeared by his Attorney, and after Judgment Plaintiff gave Notice of the Execution of a Writ of Inquiry to Defendant himſelf (and not to his Attorney) which was held bad Notice, and the Writ of Inquiry and Inquiſition taken thereupon were ordered to be ſet aſide. *Agar* for Defendant; *Wynne* for Plaintiff.

Lowes *againſt* Smith, in Northumberland. Mich. 11 Geo. 2.

NOTICE of executing Writ of Inquiry of Damages at the *Moot-Hall* in the *Caſtle-Garth*, without ſaying in what County, was held inſufficient, and the Inquiry ſet aſide. *Agar* for Defendant; *Prime* for Plaintiff.

Atwood *againſt* Meredith, Executor.

COPY of a Special *Capias* to Plaintiff's Damages 40*l.* was ſerved on Defendant without Notice to appear, and Appearance was entred by Plaintiff on Affidavit of Service. Defendant moved to ſtay the Proceedings for want of Notice, and the Court was of Opinion that the Statute of 12 *Geo.* and 5 *Geo.* 2. ought to be conſidered as one and the ſame Law; and in all Caſes where,

where Proceſs is ſerved, let the Damages be above 10 *l.* or under, Notice to appear muſt be given. *Wright* for Plaintiff; *Draper* for Defendant.

Smith *againſt* Hoff. Hil. 11 Geo. 2.

PLaintiff's Attorney gave Notice as follows: *I hereby countermand my Notice of Trial given for the ſecond Sitting within this Term, and continue the ſame till the third Sitting,* &c. Defendant made no Defence, and moved to ſet aſide the Verdict. *Per Cur'*: After a Notice is countermanded it cannot be continued; the Verdict muſt be ſet aſide.

Butler *againſt* Johnſon.

DEfendant had obtained a Judge's Order for Time to plead, pleading iſſuably and taking Notice of Trial within Term, or if he ſhould not plead, taking the like Notice of executing Writ of Inquiry. The Time for pleading expired *February* 5. when Defendant not pleading, Plaintiff ſigned Judgment, and *February* 7. gave Notice to execute Inquiry on the 8th. Defendant moved to ſet aſide the Inquiry for Inſufficiency of Notice, urging that Plaintiff ought to give as much Notice as he could. *Per Cur'*: Plaintiff might have given Notice on the 6th; ſhort Notice ſhould be at leaſt as much as is ſufficient to countermand a Notice, *viz.* two Days. Let the Inquiry be ſet aſide without Coſts. *Skinner* for Plaintiff; *Wright* for Defendant.

Hollis *againſt* Weſtbury. Eaſt. 11 Geo. 2.

PLaintiff gave Notice of the Execution of a Writ of Inquiry of Damages at the Sign of the *Bell,* without making Mention of any Town; which Notice was held inſufficient, and the Inquiry ſet aſide. *Agar* for Defendant; *Eyre* for Plaintiff.

Laſt *againſt* Denny. Mich. 12 Geo. 2.

MOTION to ſet aſide Inquiry for Irregularity, Notice being given to execute it at 11 o'Clock, without naming any other Hour, *Cur'* held it regular, provided it was executed before 12; which appearing by Affidavit, Court diſcharged the Rule to ſhew Cauſe. *Skinner* for Defendant; *Prime* for Plaintiff.

Chriſtophory *againſt* Otto. Hil. 12 Geo. 2.

WRIT returnable *Oct. Hil.* Declaration left in the Office *de bene eſſe* the firſt Day of the Term. Defendant's Attorney put in Bail in Time; whereupon Plaintiff's Attorney demanded a Plea, and for want thereof ſigned Judgment. Defendant moved to ſet aſide the Judgment, inſiſting that his Attorney ought to have had Notice of the Declaration, and obtained a Rule to ſhew Cauſe, which was diſcharged. The Declaration is well delivered *de bene eſſe*, and Notice is not neceſſary. *Eyre* for Plaintiff; *Draper* for Defendant.

N. B. This has ſince been otherwiſe determined, and Notice held neceſſary.

Panchand *againſt* Woolley.

RULE to ſhew Cauſe why the Judgment ſhould not be ſet aſide, diſcharged. The Objection was, that the Writ was not ſhewn at the Time of Service of the Copy. *Per Cur'*: It is not neceſſary. *Vide* Acts to prevent vexatious Arreſts, 12 *Geo.* & 5 *Geo.* 2. *Agar* for Plaintiff; *Draper* for Defendant.

Braty *againſt* Baldock. Eaſter 12 Geo. 2.

PLaintiff declared *de bene eſſe*, and gave Notice to plead in four Days, though Defendant by the Rules of the Court was intitled to eight Days Time to plead. Plaintiff ſtaid till after the eight Days expired before he ſigned Judgment; but the

Notice being bad, the Rule to ſhew Cauſe why the Judgment ſhould not be ſet aſide was made abſolute. *Skinner* for Defendant; *Wright* for Plaintiff.

Gregory *againſt* Reeves. Trin. 13 Geo. 2.

IT being doubtful whether *Sunday* ſhould be reckoned as one Day in Notice to juſtify Bail, it was determined *per Cur'*, that for the future *Sunday* ſhall not be counted one (it not being a proper Day to inquire after Bail upon) but two Days Notice muſt be given, of which *Sunday* ſhall not be one. Upon Motion by *Comyns* for Defendant to juſtify Bail, Notice ſerved *Saturday June* 23. to juſtify Bail *Monday* the 25th. The Notice being inſufficient, the Bail were not ſuffered to juſtify.

Mackintoſh *againſt* Melo. Mich. 13 Geo. 2.

WRIT returnable the firſt Return of the Term. Declaration left in the Office *de bene eſſe* the firſt Day of the Term (*October* 23.) and Rule to plead given that Day. Notice the ſame Day ſerved upon Defendant to plead within the firſt four Days of *Michaelmas* Term. Plaintiff ſtaid till the Time for appearing was out, and then entered an Appearance by Affidavit, and ſigned Judgment. Defendant moved to ſet aſide Judgment, objecting to the Notice of Declaration, that it ought to have been to plead within four Days after Declaration delivered according to the Rules of *Michaelmas* and *Eaſter*, 3 *Geo*. 2. and not within the firſt four Days of the Term. Rule to ſhew Cauſe diſcharged. *Per Cur'*: Though the Words of the General Rules of Court aforeſaid do ſeem to exclude the Day of the Delivery of the Declaration, yet the Conſtruction muſt be agreeable to the Rule to plead, which is always incluſive; and the Plaintiff having ſtaid 'till the Time for appearing was out, he might regularly enter Appearance by Affidavit, and ſign Judgment. Vide *Charlton* and *Hankey*, *Hil*. 7 *Geo*. 2. *Agar* for Defendant; *Eyre* for Plaintiff.

Pritchard *againſt* Lewis. Hil, 13 Geo. 2.

WRIT returnable in *Eaſter* Term laſt. Plaintiff entered Appearance according to the Statute, and left Declaration in the Office, but reſted all *Trinity* and *Michaelmas* Term; and before the Eſſoin-Day of this Term gave Defendant Notice of Declaration. The Declaration was deemed well delivered only from the Time of Notice, and conſequently came too late. Defendant was then out of Court. Rule abſolute to ſtay Proceedings. *Hayward* for Plaintiff; *Bootle* for Defendant.

Coates *againſt* Hammond.

ISSUE was joined in *Hilary* Term, 12 *Geo.* 2. and Notice of Trial given 8th *February* 1738, for the then next *Yorkſhire* Aſſizes, which Notice was countermanded, and 26th *January* 1739, in *Hilary* Term 13 *Geo.* 2. Plaintiff gave new Notice, and proceeded to Trial at laſt Aſſizes. Defendant moved to ſet aſide the Verdict, inſiſting that the laſt Notice of Trial ought to have been given before the Eſſoin-Day of *Hilary* Term. Upon ſhewing Cauſe, the Practice appeared to be doubtful, and the Court ordered the Verdict to be ſet aſide, and Coſts to attend the Event of the Suit. *Bootle* for Defendant; *Burnett* for Plaintiff.

Note; A new General Rule was made upon this Occaſion to regulate the Practice for the future.

Tilney *againſt* Watſon. Mich. 14 Geo. 2.

AN Inquiſition taken upon a Writ of *Scire fieri inquir'* was ſet aſide, for Want of due Notice of the Execution of the Writ. Plaintiff inſiſted, that Notice was not neceſſary. If the Sheriff returns a *Devaſtavit*, Defendant may traverſe the Return But *per Cur'*: The ſame Notice is requiſite as of executing a Writ of Inquiry of Damages. *Draper* for Defendant; *Bootle* for Plaintiff.

Stafford

Stafford *againſt* Thompſon.

THE Commiſſion-Day of the Aſſizes was *Monday*, and Notice of Trial was countermanded on *Saturday* next before, and *Sunday* being the only intervening Day, the Queſtion was, Whether the Notice was regularly countermanded, or not? The Court held the Countermand to be regular, and diſcharged the Rule to ſhew Cauſe why Plaintiff ſhould not pay Defendant Coſts for not proceeding to Trial. *Skinner* for Plaintiff; *Bootle* for Defendant.

Bowler *againſt* Jenkin. Hilary 15 Geo. 2.

DEfendant lived above forty Miles from *London*, and Plaintiff proceeded to Trial at a Sitting there, upon ten Days Notice; no Defence was made, and Defendant inſiſting, that he was intitled to fourteen Days Notice of Trial, moved to ſet aſide the Verdict, and had a Rule to ſhew Cauſe, which was made abſolute. By the Act 14 *Geo.* 2. no Cauſe is to be tried in *London* or *Middleſex*, where Defendant reſides above forty Miles from *London* or *Weſtminſter*, unleſs Notice in Writing be given at leaſt ten Days before ſuch intended Trial. Before this Act, fourteen Days Notice was the ſettled Practice; and unleſs neceſſitated, the Court will not be bound by an Act made to take away a Benefit from Defendants. The Practice or Law of the Court cannot be taken away but by Negative Words, *i. e.* There ſhall be no more than ten Days Notice. Fourteen Days Notice, notwithſtanding this Act, ſtill neceſſary. *Hayward* for Defendant; *Agar* for Plaintiff.

Smith *againſt* Lacock. Trinity 16 Geo. 2.

COURT held, Notice of the Execution of the Writ of Inquiry of Damages, given in the Country to the Attorney there, (and not to the Agent who received the Declaration in Town) good and ſufficient Notice, and diſcharged the Rule to ſhew Cauſe why the Inquiſition ſhould not be ſet aſide. *Bootle* for Defendant; *Agar* for Plaintiff.

Taſhburn *againſt* Havelock. Mich. 16 Geo. 2.

NOTICE of Trial on an old Iſſue was given to the Attorney in the Country, and not to the Agent in Town; the Queſtion was, Whether it was good Notice, or not? *Per Cur'*: The Notice on this old Iſſue is well given to the Attorney in the Country, for it may be given either to Attorney or Agent; but where Notice of Trial is given on the Iſſue-Book, it muſt be given to the Agent, becauſe the Iſſue can be delivered no where but in Town. Notices of Trial and Countermands, Notices of executing Writs of Inquiry and Countermands, may be given either to the Attorney in the Country, or to the Agent in Town. But of thoſe Things which are to be done only in Town, Notice muſt be to the Agent; *and all Notices, where the Party hath a known Attorney, muſt be given to that Attorney, or his Agent, and not to the Party himſelf.* There has been no Determination of this Court that Notice of Trial in the Country is bad, though it hath been ſo underſtood. *Mountſteven* againſt *Templar*, *Mich.* 7 *Geo.* 2. Attornies in the Country are to take no Notices but of Trial, Inquiries, and their Countermands. *Eaſter* 6 *Geo.* 2. That Countermand of Notice of Trial may be given either in Town or Country.

Darker *againſt* Edwards. Mich. 16 Geo. 2.

THE *Capias ad reſpond'* bore Teſte 7th *July*, returnable 27th *October*, and was dated 25th *October* 1742. A Copy was ſerved, with Notice to appear on the 27th *October* next; which muſt refer to the Time when ſerved, and conſequently muſt intend *October* 1743. The Notice ſhould have been to appear on the 27th of this inſtant *October*, or *October* 1742, and not *October* next. The Act of Parliament deſigned to make certain the Time for Defendant's Appearance, by the Notice. The Rule to ſtay Proceedings was made abſolute. *Ketelbey* for Defendant; *Agar* for Plaintiff.

Heſter *againſt* Hall.

AFTER Notice of Trial given, and regularly countermanded, Plaintiff obtained a Rule to diſcontinue, upon Payment of Coſts. After the Notice of Trial, and before the Countermand, a Witneſs for Defendant, who reſided in *London*, ſet out for *York* Aſſizes; and the Queſtion was, Whether the Expence of this Witneſs could be allowed Defendant in Coſts? The Court held, that as the Countermand was regular, Coſts for this Witneſs could not be allowed. *Draper* for Defendant; *Willes* for Plaintiff.

Bailey *againſt* Semple. Trinity 16 & 17 Geo. 2.

DEfendant being beyond the Seas, and his Attorney dead, Rule abſolute, that Demand of a Plea in the Office ſhall be ſufficient Notice; upon Affidavit of Service of a Rule to ſhew Cauſe on one of Defendant's Bail, and that the other was not to be found. *Draper* for Plaintiff.

Blackmore *againſt* Smith. Mich. 17 Geo. 2.

AFTER Plea pleaded, Proceedings had ſtayed three Years, and then Plaintiff delivered an Iſſue, and afterwards gave fourteen Days Notice of Trial. The Court made the Rule abſolute to ſet aſide the Verdict, for Want of a Term's Notice of his Intent to proceed, by the Party proceeding purſuant to General Rule, *Eaſter* 13 *George* 2. *Birch* for Plaintiff; *Agar* for Defendant.

Miller *againſt* Parſons. Hilary 17 Geo. 2.

THE Name [*White*] was put on the Bail-piece, as Attorney for Defendant; Plaintiff's Attorney, not being able, upon diligent Inquiry, to find this *White*, left a Declaration in the Office, and gave Notice thereof to Defendant, and for Want of a Plea ſigned Judgment, and gave Notice of executing a Writ of

Inquiry to Defendant. On the Part of Defendant it was inſiſted, that the Proceedings were irregular; that Plaintiff's Attorney ought to have found out Defendant's Attorney; or if he could not, that Notice of the Declaration, *&c.* could not be ſerved on Defendant without Leave of the Court. And a Rule was made to ſhew Cauſe why the Proceedings ſhould not be ſet aſide, with Coſts. Upon ſhewing Cauſe, the three Prothonotaries reported, and the Court held, the Proceedings to be regular, and the Rule was diſcharged. Where the Party's Attorney cannot be found, Notice may be ſerved on the Party himſelf. Where neither Attorney nor Party can be found, the Court muſt be applied to, and will order Notice, *&c.* in the Office to be good, unleſs the Bail (if any) ſhew Cauſe to the contrary. *Vide Bailey* againſt *Semple, Trin.* 16 & 17 *Geo.* 2. *Gapper* for Plaintiff; *Agar* for Defendant.

Johnſon *againſt* Johnſon and Ouchterlony. Trinity 17 & 18 Geo. 2.

CAPIAS returnable *Cro. Trin.* Dated 18th *May* 1744, and ſerved with Notice to appear 21ſt *May* next [*May* 1745] inſtead of this inſtant *May*. Rule abſolute to ſtay Proceedings. *Skinner* for Plaintiff; *Draper* for Defendant.

Roe, on the Demiſe of Hutchings, *againſt* Dunning and others. Mich. 18 Geo. 2.

RULE to ſhew Cauſe why Judgment as in Caſe of a Nonſuit. Objected by Counſel, for the Leſſor of Plaintiff, that a Term's Notice of Motion ought to have been given; but the Court held otherwiſe. The General Rule of Court extends only to the Party's Intent to proceed, not to Motions to end Proceedings. Rule abſolute. *Huſſey* for Defendant; *Gapper* for Leſſor of Plaintiff.

Reed *againſt* Blanchett. Hilary 19 Geo. 2.

DEfendant moved to amend his Notice, to ſet off a mutual Debt, delivered with his Plea of *Non aſſumpſit*, (by ſtriking out Plaintiff, and inſerting Defendant) which the Court denied. Then Defendant prayed Leave to withdraw his Plea, and plead *Non Aſſumpſit de novo*, with new Notice to ſet off, which was granted. *Skinner* and *Bootle* for Plaintiff; *Prime* for Defendant.

Walker *againſt* Towne and Lee. Trinity 19 & 20 Geo. 2.

NOTICE of Declaration being left in the Office ſerved on a *Sunday*, Rule to ſhew Cauſe why Defendant ſhould not have an Imparlance, made abſolute. The Court held the Notice on *Sunday* bad, within the Statute *Car*. 2. which ought to have a large Conſtruction in Favour of Religion. Declaration in Ejectment, which is conſidered as Proceſs, cannot be delivered on *Sunday*. Proceſs and Proceeding have been conſtrued, by Chief Juſtice *Holt*, to be the ſame Thing. Anciently all Pleadings were *Ore tenus* at the Bar. Notice of Declaration is the ſame as Delivery. It is no Declaration till Notice. *Wynne* for Defendant; *Bootle* for Plaintiff.

Braithwaite *againſt* Allan. Hilary 20 Geo. 2.

DEfendant objected to the Inſufficiency of Plaintiff's Notice of executing a Writ of Inquiry of Damages, with Reſpect to Uncertainty of Place. The Words of the Notice were at the uſual Place at *Durham*, and obtained a Rule to ſhew Cauſe why the Inquiſition ſhould not be ſet aſide. Upon ſhewing Cauſe it appeared, that for twenty-four Years paſt, and upwards, the Place, *viz*. the Court-Houſe where Cauſes are tried, and where this Writ was executed, had been the known and eſtabliſhed Place for executing Writs of Inquiry; two Counſel for Defendant attended the Execution of this Writ, and croſs-examined Plaintiff's Witneſſes. The Rule was diſcharged. *Prime* for Defendant; *Willes* for Plaintiff.

Kettle *againſt* Bulſtrode, Clerk of the Juries. Mich. 22 Geo. 2.

A Copy of the Bill filed, with Notice to appear, was left with Mr. *Pritchard*, Defendant's Deputy, after Nine o'Clock in the Evening. Rule abſolute to ſtay the Proceedings. *Poole* for Defendant; *Prime* for Plaintiff.

againſt Ferguſon.

THE Writ was returnable *Tres Mich.* the Notice to appear ſubſcribed to the Copy ſerved was to appear at the Return, being the 20th *October*, without inſerting the Word (next), or (the Year 1748), held defective. Rule abſolute to ſtay Proceedings. *Skinner* for Defendant.

Thomlinſon, Gent. one, &c. *againſt* Gorton. Eaſt. 23 Geo. 2.

RULE to ſhew Cauſe why Proceedings ſhould not be ſet aſide, with Coſts. Objected, that Declaration left in the Office was not indorſed to be left *de bene eſſe*. The Queſtion was, Whether Notice of Declaration left *de dene eſſe*, without indorſing the Declaration, was or was not ſufficient? The Secondaries did not agree in their Report of the Practice. One of them thought the Notice ſufficient without the Indorſement. The two others *contra*. Rule abſolute to ſet aſide the Delivery of the Declaration, and ſubſequent Proceedings, *ſans* Coſts. *Draper* for Defendant; *Willes* for Plaintiff.

Naſh *againſt* Harrow. Trinity 24 Geo. 2.

PLAINTIFF's Attorney gave two Notices of executing Inquiry of Damages, one to Defendant himſelf, a Priſoner in the *Fleet*, the other to the Turnkey; but, by Miſtake, in both Notices the Name *Birt*, inſtead of *Naſh*, was inſerted as Plaintiff; notwithſtanding which, the Inquiry was executed, and final

Judgment ſigned. Rule abſolute to ſet aſide Inquiſition and final Judgment, with Coſts. *Prime* for Defendant; *Wynne* for Plaintiff.

Moſley *againſt* Sanford. Eaſter 29 Geo. 2.

INQUISITION taken on Writ of Enquiry of Damages, ſet aſide with Coſts, for want of Notice of the Execution of ſaid Writ ſerved on Defendant's Attorney, or his Agent: Bail above had been put in, and Declaration received by Defendant's Attorney; notwithſtanding which, the Notice aforeſaid was not ſerved upon him or his Agent, but upon Defendant himſelf; which was clearly irregular. *Poole* for Defendant; *Hewitt* for Plaintiff.

Nonpros, Nonſuit, &c.

Ellwood *againſt* Ellwood. Trin. 6 & 7 Geo. 2.

A Motion was made to ſet aſide a *Non-pros* ſigned for want of a Declaration, which had been demanded of Plaintiff's Attorney in the Country, and not of the Agent in Town. It was, upon ſhewing Cauſe, ſworn that Plaintiff's Attorney in the Country agreed the Demand of him ſhould be regular. *Per Cur'*: Let the *Nonpros* be ſet aſide; no Agreement of Country Attornies can vary the Practice of the Court; all Tranſactions of this Kind muſt be in Town.

Love *againſt* Day. Mich. 7 Geo. 2.

INDEBITATUS Aſſumpſit brought againſt a Stake-holder for Money had and received for Plaintiff's Uſe. The Judge of Aſſizes, who tried the Cauſe, was of Opinion that the Action would not lie, therefore nonſuited the Plaintiff upon the opening his Caſe, without hearing any Evidence. Plaintiff upon Affidavits of this Matter, moved the Court to ſet aſide the Nonſuit; but the Court refuſed to make any Rule. It was alledged from the Bar, that the Court of *King's Bench* had made a Rule in the like Caſe, but no ſuch was produced.

Coſta *againſt* Miſſaubin, Adminiſtrator, during the Minority of an Infant Executor. Mich. 8 Geo. 2.

THIS was an Action of Debt brought upon a *Non-pros*, in an Action wherein Defendant's Teſtator was Plaintiff, and he died after the Nonſuit, and before the Day in Bank. *Eyre* moved to ſet aſide the *Nonpros* and ſtay Proceedings, and obtained a Rule to ſhew Cauſe; and upon ſhewing Cauſe, Court were of Opinion that this is a Matter of Error, and ought not to be conſidered as an Irregularity; (the Nonſuit is not helped by the Statute, which extends only to Verdicts) and therefore diſcharged the Rule. 1 *Salk*. 8. *Bawler* againſt *Delander* in *B. R.* 1 *Geo. Chapple* and *Eyre* for Defendant; *Skinner* for Plaintiff.

Billing *againſt* Billing. Trin. 10 & 11 Geo. 2.

A *Non-pros* for want of a Declaration was ſigned in Prothonotary *Borrett*'s Office, which was ſet aſide as irregular; Mr. *Laremore*, Plaintiff's Attorney, being a Practiſer in *Cooke*'s Office. The Rule to declare muſt always be given in that Prothonotary's Office where Plaintiff's Attorney is entered; though a Declaration be duly demanded, that is not ſufficient to ſupport the *Non-pros*, unleſs the Rule be given in the proper Office. *Bootle* for Plaintiff; *Chapple* for Defendant.

Wilſon *againſt* Barber. Mich. 14 Geo. 2.

A Demurrer, and ſeveral Iſſues were joined; before the Demurrer argued, Plaintiff proceeded to try the Iſſues; as to one of which the Proof lay upon Defendant, and as to the reſt upon Plaintiff. Plaintiff began at the Aſſizes to give Evidence upon the firſt Iſſue, and failing in Proof, was nonſuited. Plaintiff moved to ſet aſide the Nonſuit, which was thought reaſonable,

able though againſt the Courſe of the Court. The Nonſuit was ſet aſide by Conſent, on Payment of full Coſts. *Draper* and *Willes* for Plaintiff; *Bootle* for Defendant.

Diggs *againſt* Price. Mich. 15 Geo. 2.

DRAPER for Defendant moved, that the Iſſue-Roll might be brought into Court; and for Judgment as in Caſe of Nonſuit, purſuant to the Act of Parliament 14 *Geo.* 2. *Per Cur'*: In the firſt place a Rule muſt be given for Plaintiff to enter the Iſſue upon Record, which if he fails to do, Defendant may have a *Nonpros* for Want thereof. If Plaintiff enters the Iſſue, the Roll muſt be produced in Court, and thereupon Defendant may move for a Nonſuit upon the Act of Parliament. Whenever the Court admits the Cauſe ſhewn by Plaintiff ſufficient to diſcharge the Rule to ſhew Cauſe why a Nonſuit, the Court will appoint a future Day for the Trial, in Country Cauſes at the next Aſſizes, in *London* or *Middleſex* at a Sitting at a convenient Diſtance.

Clarke *againſt* Gorrill.

PLAINTIFF's own Illneſs was held ſufficient to prevent a Nonſuit upon the late Act of Parliament, and was allowed as ſufficient Cauſe, and next Aſſizes appointed for the Trial. After Debate, and the Court's Opinion, *Bootle* objected to Plaintiff's Affidavit, that it was ſworn before his own Attorney. But, *per Cur':* That Objection comes now too late. *Bootle* for Defendant; *Prime* for Plaintiff.

Dapp *againſt* Woodman. Eaſter 15 Geo. 2.

RULE to ſhew Cauſe why Judgment as in Caſe of Nonſuit, purſuant to the late Statute, diſcharged. Plaintiff ordered to pay Coſts of the Application, and peremptorily to try the Cauſe at the next Sitting. The Court inclined to think they could, if they thought it reaſonable, enlarge the Time afterwards, in Caſe of a Default. *Agar* for Plaintiff; *Wynne* for Defendant.

Vile, Widow, *againſt* Daw and others. Trinity 16 Geo. 2.

ISSUE was joined in *Trinity* Term laſt, but Plaintiff did not proceed to Trial at the then next Aſſizes, and before the laſt, which was the ſecond Aſſizes, Plaintiff married, to wit, 10th *December* 1741. After Notice of Trial given, Defendant moved for Judgment as in Caſe of Nonſuit; and upon ſhewing Cauſe, the Court were of Opinion, that though no Excuſe was ſhewn for Plaintiff's not proceeding to Trial at the firſt Aſſizes, yet Defendants, for that Default, ſhould have applied in *Michaelmas* Term laſt; but are now too late. As to the ſecond Aſſizes, the Excuſe is ſufficient; by the Marriage the Suit is abated *de facto*. The Rule was diſcharged. *Draper* for Plaintiff; *Bootle* for Defendants.

Sutton *againſt* Waddilove, in Replevin. Mich. 16 Geo. 2.

DEFENDANT, by Leave of the Court, made two Avowries, *viz.* firſt for *Damage feaſant*; ſecond for Rent in Arrear. Plaintiff obtained a Judge's Order for a Week's Time to plead in Bar to the Avowries, pleading iſſuably, and taking Notice of Trial for the Sitting after laſt Term in *Middleſex*; and within Time demurred to the firſt, and pleaded in Bar to the laſt Avowry. Defendant ſigned a *Nonpros*, for Want of Plaintiff's pleading iſſuably to both Avowries, which the Court held to be regular; but upon Payment of Coſts, pleading iſſuably to both Avowries, and taking Notice of Trial within this Term, the *Nonpros* was ſet aſide. *Willes* and *Agar* for Defendant; *Belſield* for Plaintiff.

Guy *againſt* Wilkinſon. Trinity 16 & 17 Geo. 2.

RULE to ſhew Cauſe why Judgment as in Caſe of Nonſuit, diſcharged. Defendant having firſt applied for Coſts for Plaintiff's not proceeding to Trial, has made his Election. The

Plaintiff was ordered peremptorily to proceed to Trial at next Aſſizes. *Draper* for Plaintiff; *Bootle* for Defendant.

Milton and another, Aſſignees of a Bankrupt, *againſt* Terrill. Mich. 17 Geo. 2.

PLAINTIFF's not having proceeded to Trial after Iſſue joined, according to the Courſe of the Court, Defendant had applied for Judgment as in Caſe of Nonſuit, purſuant to the Statute; and Plaintiff having made a reaſonable excuſe, further Time was allowed by the Court for Trial peremptorily at laſt Aſſizes. Plaintiffs gave no new Notice of Trial, but made Default again, and endeavoured to excuſe the ſecond Default by Affidavit, purporting, that Plaintiffs, the Aſſignees, found a Debt entred in the Bankrupt's Books as due from Defendant, but for Want of the Bankrupt's attending Plaintiffs in Time, as requeſted, according to his Duty, and ſupplying them with Proof of the Debt, and informing them how to anſwer a Set-off inſiſted on by Defendant, Plaintiffs could not proceed to Trial. *Per Cur':* The Word [peremptory] in the Rule, doth not preclude the Court from a farther Enlargement of the Time, if they think it reaſonable. It is wrong to inſert the Word [peremptory]; the ſecond Excuſe may be better than the firſt. The ſtatute is founded on Neglect. Suppoſe Plaintiff's Attorney ſhould die *Manu Dei*, or Defendant ſhould, by ſome Act of his, hinder the Trial; the Effects of the Bankrupt muſt not be waſted to the Prejudice of his Creditors. No Notice of Trial was given for laſt Aſſizes, Defendant's Attendence was then unneceſſary. The Bankrupt, after obtaining his Certificate, may be a Witneſs. The Time for Trial was further enlarged till next Aſſizes, upon Payment of Coſts of the Application. *Belfield* for Defendant; *Draper* for Plaintiff.

Sugar, qui tam, *againſt* Webſter. Trinity 17 & 18 Geo. 2.

JUDGMENT as in Caſe of a Nonſuit applied for; and the Queſtion was, Whether an Action *qui tam* was within the ſtatute, or not? *Per Cur':* A common Informer may be nonſuited. Plaintiff was ordered to pay Coſts of the Application, and peremptorily to proceed to Trial at next Aſſizes. *Willes* for Plaintiff; *Skinner* for Defendant.

Ogle, Eſquire, Executor, *againſt* Moffit.

DEFENDANT had applied for and received Coſts, for Plaintiff's not proceeding to Trial at laſt Aſſizes, and now moved for Judgment as in Caſe of Nonſuit, purſuant to the Statute; but having made his Election, and taken Coſts for not proceeding to Trial, he cannot have the other Remedy. The Motion was denied. *Bootle* for Defendant; *Prime* for Plaintiff.

Lowe *againſt* Peacock and Others. Hilary 18 Geo. 2.

DEFENDANTS obtained a Rule to ſhew cauſe why Judgment of Nonſuit *ſecundum Stat'*. Plaintiff afterwards had a Rule to ſhew Cauſe why he ſhould not have Leave to diſcontinue, which was enlarged, and both came on together. The Court held the Application for Leave to diſcontinue, after the firſt Motion, wrong, and made the Rule abſolute for a Nonſuit. *Bootle* for Defendant; *Willes* for Plaintiff.

Jones, on the Demiſe of Wyat, *againſt* Stephenſon, in Ejectment.

TWO of Plaintiff's material Witneſſes were diſabled by Gout, *&c.* from attending the Trial laſt Aſſizes. Excuſe good to prevent Nonſuit. Time given Plaintiff to try at next Aſſizes peremptorily, on Payment of Coſts for not proceeding to Trial at laſt Aſſizes only. Where the Excuſe is ſufficient, the Court do not give Coſts of the Application; *aliter* where it is inſufficient. *Prime* for Plaintiff; *Birch* for Defendant.

Pepiatt, one, &c. *againſt* Bell. Eaſter 19 Geo. 2.

JUDGMENT as in Caſe of Nonſuit moved for, on Affidavit of Notice of Motion only, and Rule to ſhew Cauſe. Objection by Plaintiff's Counſel, that to ſupport the Rule, there ought to have been alſo an Affidavit that the Cauſe was not tried; which Objection was allowed, and the Rule diſcharged.

Hartley, alias Green, *againſt* Atkinſon. Mich. 25 Geo. 2.

MOTION by Plaintiff, and Rule to ſhew Cauſe why a Nonſuit at laſt *Yorkſhire* Aſſizes ſhould not be ſet aſide. Plaintiff at the Trial had offered in Evidence an unſtamped Copy of a Record of Proceedings at the Seſſions of the Peace; to which Defendant's Counſel objecting the Want of Stamps, the Plaintiff's Counſel gave up the Point, and ſubmitted to a Nonſuit; though on looking into the Acts of Parliament ſince, it appears, that no Stamps on ſuch Copy of a Seſſions Record are requiſite. *Per Curiam:* The ſtanding Rule is, that if a Nonſuit be regular, the Parties are out of Court, and it cannot be ſet aſide; if irregular, it is not conſidered as a Nonſuit. Lord Chief Juſtice not quite ſatisfied with this Rule; but till the Judges of all the Courts of *Weſtminſter* agree to alter it, the Rule muſt ſtand. If the Courts were to ſet aſide regular Nonſuits, the Merits of Cauſes and Points of Law would be brought into Queſtion on Motions. *Prime* for Defendant; *Bootle* for Plaintiff.

Beere *againſt* Brooking. Mich. 26 Geo. 2.

ISSUE joined, and Notice of Trial given for laſt Sitting in *London* within laſt Term; but a Miſtake being diſcovered in the Declaration, Plaintiff did not proceed to Trial. Defendant applied for Judgment as in Caſe of a Nonſuit, and obtained a Rule to ſhew Cauſe. On hearing Counſel on both Sides, the Iſſue-Roll not being ſtruck into the Bundle, and the Amendment being ſmall, the Court gave Plaintiff Leave to amend his Declaration, on Payment of Coſts of Application, and for not proceeding to Trial; and appointed a peremptory Day for Trial. *Draper* for Plaintiff; *Willes* for Defendant.

Bentley *againſt* Scott and another, in Replevin. Eaſter 26 Geo. 2.

PPIME, for Defendant, moved for Judgment as in Caſe of Nonſuit. *Poole* for Plaintiff endeavoured to diſtinguiſh this from Common Caſes, becauſe, in Replevin Defendants might, in the firſt Inſtance, have carried down the Record to Trial. *Per Cur'* : The Act of Parliament has made no Diſtinction.

Margerum *againſt* Fenton. Trinity 26 & 27 Geo. 2.

NOnpros ſigned for Want of Plaintiff's entring Iſſue, ſet aſide as irregularly ſigned one Day before the Time limited by Rule for entring the Iſſue expired. The Rule runs, " Unleſs Plaintiff " within four Days next after Notice ſhall cauſe the Iſſue to be " entered", which excludes the Day of Notice. The Rule was ſerved *Friday* 22d of *June*, and the Iſſue-Roll brought in *Tueſday* following, on which Day the *Nonpros* was ſigned. *Wilſon* for Defendant; *Willes* for Plaintiff.

Eagles and another *againſt* Oſbaldeſtone, *&c.* Hilary 31 Geo. 2.

SPECIAL Action on the Caſe by Plaintiffs againſt Defendant, for ſuffering an inſolvent Debtor to be diſcharged without Oppoſition, though retained by Plaintiffs as their Attorney to oppoſe the ſame; Plaintiffs not having proceeded to Trial laſt Term, as they might have done, Defendant by Motion in Court obtained a Rule to ſhew Cauſe, why Judgment as in Caſe of Nonſuit; whereupon Plaintiffs obtained a Side-bar Rule, to ſhew Cauſe, why they ſhould not have leave to amend their Declaration, by ſtriking out an Allegation, that they paid Defendant ſeveral Sums of Money. The whole Matter coming on in Court, the Side-bar Rule for amending the Declaration was diſcharged, and the Rule for Judgment as in Caſe of Nonſuit made abſolute. *Hewitt* for Defendant; *Davy* for Plaintiffs.

Outlawry.

Oſborne *againſt* Carter. Eaſter 6 Geo. 2.

DEfendant taken on a *Capias utlagat'* on a *Sunday*, moved to be diſcharged, the Taking being contrary to the Statute 29 *G.* 2. The Court held the Taking bad; but refuſed to grant an Attachment, and put the Defendant to take the Remedy given by the Statute.

North *againſt* Chambers. Mich. 7 Geo. 2.

BAYNES moved for Defendant, that Plaintiff might reverſe an Outlawry at his own Expence, upon Affidavits that Defendant, at the Time he was returned outlawed, and long before and after, was abroad in Parts beyond the Seas. Denied *per Cur'*, becauſe this is Error, and not proper to be conſidered as an Irregularity.

Peach *againſt* Wadland. Mich. 11 Geo 2.

PLaintiff having commenced a Proceeding to Outlawry againſt Defendant, Defendant gave Notice to Plaintiff that he had appeared, and obtained a *Superſedeas* to the Exigent. Plaintiff ſearched at the *Compter*, and no *Superſedeas* being allowed there, Defendant was returned outlawed, who moved to ſet aſide the Outlawry. On ſhewing Cauſe, Defendant alledged he had entered an Appearance with the Exigenter; but that appeared to be unneceſſary, and a novel Impoſition by the Exigenter, whoſe Appearance Book is two Years old only. The Court held, that the *Superſedeas* is in itſelf an Appearance, if delivered to the Sheriff before the Return of the Exigent; but that not having been done in this Caſe, Defendant is regularly outlawed; and the Rule to ſhew Cauſe why the Outlawry ſhould not be reverſed at Plaintiff's Expence, was diſcharged. *Eyre* and *Agar* for Plaintiff; *Draper* for Defendant. Vide *Watſon*'s printed Rules, *fol.* 69 and 78.

Blunt *againſt* Beale. Eaſter 11 Geo. 2.

PRICE moved, That Plaintiff might reverſe an Outlawry at his own Expence, Defendant being in Parts beyond the Seas at the Time he was outlawed. *Per Cur'* : Defendant may take Advantage of this by Writ of Error, 'tis not Matter of Irregularity. No Rule.

Bennett *againſt* Sydenham. The ſame againſt Skinner. Mich. 12 Geo. 2.

BAKER, Attorney for Plaintiff. Motion by *Eyre* and *Draper* for Defendant to reverſe Outlawries on common *Clauſum fregit* at Plaintiff's Expence, on Affidavits of Defendant's publick Appearance and Dealings, ſworn by themſelves only. *Per Draper*, Act to prevent vexatious Arreſts directs Proceſs to be ſerved where no Affidavit is made of the Debt; and an Outlawry can only be ſupported by Proceſs to arreſt. It appears, that Plaintiff's Demand on Defendant *Sydenham* is no more than 15 *s.* 6 *d.* and on Defendant *Skinner* 1 *l.* 5 *s.* *Wright* for Plaintiff urged, That where Defendants cannot be come at to be perſonally ſerved with Proceſs, Plaintiff has no Remedy but an Outlawry. *Per Cur'* : Let the Rule be enlarged 'till next Term, that *Baker*, Plaintiff's Attorney, may in the mean Time make Satisfaction to the Parties.

Holman *againſt* Braſier. Hilary 12 Geo. 2.

RULE to ſhew Cauſe why Outlawry ſhould not be reverſed at Plaintiff's Expence. It appeared, that two Writs had been ſued out and Defendant could not be arreſted: He lived on the Confines of *Surry* and *Kent*, and when *Surry* Bailiff came to arreſt him, jumped over a Hedge into *Kent* and put Bailiff to Defiance. *Per Cur'* : Though Defendant is ſworn to appear publickly, yet 'tis plain he kept out of the Way to prevent being arreſted. Rule diſcharged. But by Conſent Debt and Coſts to be paid out of the Money in Sheriff's Hand, and Overplus repaid to Defendant. *Draper* for Plaintiff; *Bootle* for Defendant.

Speed *againſt* Barber. Mich. 15 Geo. 2.

RULE to ſhew Cauſe why Proceedings on the *Exigent poſt Ca. ſa.* ſhould not be ſtayed, was made abſolute. The *Exigent* bore *Teſte* 29th *May* laſt, and after that Day, and before the Return, Defendant became a Priſoner in the *Fleet*, at the Suit of a third Perſon. It was notorious at *Cheſter* that Defendant was become inſolvent, and had aſſigned his Effects for the Benefit of his Creditors. *Steele*, Plaintiff's Agent, was told by *Kent*, Defendant's Agent, that Defendant was in Cuſtody; the *Exigent* was not yet returned, but remained in the Sheriff's Hands. *Per Cur:* The *Exigent* was well ſued out before Defendant's Commitment to the *Fleet*, and no Notice of that Commitment was given to Plaintiff's Agent till after the *Exigent*, but the Outlawry will ſignify nothing, becauſe it may be reverſed by Writ of Error. Let the Rule be abſolute, and Plaintiff may charge Defendant in Execution. 2 *Roll*'s *Abr*. 804. *pl*. 3. where Defendant goes beyond the Seas after the *Teſte* of an *Exigent*, he may be regularly outlawed. *Wynne* for Defendant; *Willes* for Plaintiff.

White *againſt* Dunſter.

DEfendant was waived ſpecially on meſne Proceſs as a ſingle Woman, by the Name of *Dunſter*; and after the *Exigent*, and before the Outlawry, ſhe married one *William Priſeley*, *viz*. in *February* 1740; in *Auguſt* 1741 ſhe was taken by the Name of *Dunſter*, by a *Capias Utlagat'*, and a Rule was obtained to ſhew Cauſe why the Outlawry ſhould not be reverſed at the Expence of *William Priſeley*, on his entring a common Appearance for himſelf and his Wife: But the Rule was diſcharged, the Court refuſing to interpoſe, as the Marriage was after the *Exigent*. *Bootle* for Defendant; *Belfield* for Plaintiff.

Heely *againſt* Hewſon. Eaſter 16 Geo. 2.

IT appeared that pending the *Exigent*, Defendant was a Priſoner in the Gaol for the City of *York*; for which Reaſon the Court ordered the Outlawry to be reverſed, without Payment of Coſts to Plaintiff, upon Defendant's entring a common Appearance. *Birch* for Plaintiff; *Bootle* for Defendant.

Farnworth *againſt* Smith. Hilary 18 Geo. 2.

RULE to ſhew Cauſe why Outlawry ſhould not be reverſed, at Plaintiff's Expence. Objected, on the Part of Defendant, That he was a publick viſible Man, and Plaintiff had not endeavoured to arreſt him. That the *Capias, Alias* and *Pluries*, were all ſued out at one and the ſame Time. That no Affidavit of the Debt was indorſed on the Writs (though bailable) purſuant to the Statute to prevent vexatious Arreſts. That no Date was put to the Writs, as required by the Statute. The Affidavits as to Defendant's Viſibility were fully anſwered, and his total Abſconding proved. And the Court held, That in caſe of a total Abſconding, no Endeavours to arreſt are neceſſary. That Suing out the *Capias, Alias* and *Pluries* together, was regular, and warranted by conſtant Practice. That on Proceſs to the Outlawry, no Affidavit for Bail is required by Statute, or the Courſe of the Court; nor is a Date to ſuch Proceſs uſual. The Rule diſcharged, without Coſts. *Prime* for Plaintiff; *Draper* for Defendant.

Dale, Widow, *againſt* Robinſon, Clerk. Mich. 20 Geo. 2.

OBjected by Defendant, who had been outlawed on the Proſecution of the Plaintiff, That he was a publick viſible Man, and that the Return of the Proclamation was bad; it importing, that Proclamations were made as the Sheriff was by the Writ commanded, but not where or according to the Form of the Statute. Defendant's being a publick viſible Man was fully denied; and it was fully proved that he abſconded, and his Living was under Sequeſtration. The Court ſeemed to think the Return of the Proclamation ſufficient. *Fruſtra fit per plura, &c.* but ſaid, Defendant might, as to it, bring a Writ of Error, if ſo adviſed. The Rule to ſhew Cauſe why the Outlawry ſhould not be reverſed at Plaintiff's Expence, was diſcharged. *Skinner* for Defendant; *Willes* for Plaintiff.

Withall

Withall *againſt* White.

AFTER the Return of the *Exigent*, but whilſt it remained in the Hands of the Sheriffs of *London*, and before Defendant was returned Outlawed, the Court made a Rule, That a *Superſedeas* to the *Exigent* ſhould be allowed, on Payment of Coſts. *Vide General Rules*, 17 *Cha.* 2. & 2 *Jac.* 2. *Prime* for Defendant; *Willes* for Plaintiff.

Wiat *againſt* Parker. Trinity 21 Geo. 2.

DEfendant outlawed, after Judgment moved to ſet aſide the Outlawry for Want of a Proclamation. *Per Cur'*: This is not a fit Matter to be determined in a Summary Way. Defendant may bring a Writ of Error. *Cro. Jac.* 577.

French *againſt* Manby. Mich. 27 Geo. 2.

A Writ of *Allocatur* on the *Exigent* had iſſued (after Judgment and *Ca. ſa.*) returnable on the Morrow of *All Souls* laſt, 3d *November* 1753, whereupon Defendant was returned to be outlawed (*Quinto exactus*) 16th *July* 1753. It appeared, that Plaintiff died 6th *Auguſt* 1753, and that a Commiſſion of Bankrupt iſſued againſt Defendant 21ſt ſame *Auguſt*. Defendant obtained a Rule to ſhew Cauſe why Proceedings ſhould not be ſtayed, which Rule was diſcharged; the Court being of Opinion, That the Writ and Return muſt be filed, notwithſtanding Plaintiff's Death after the Day of Outlawry, but before the Return. Before an actual Aſſignment by Commiſſioners of Bankruptcy, the Crown is not bound; though there is a great Difference between an Extent in Aid *pro Rege*, and an Outlawry for a private Perſon's Debt. Here is no Foundation to tie up Plaintiff's Hands; he may proceed, if ſhall be ſo adviſed. *Prime* for Defendant; *Wilſon* for Plaintiff.

Aſhley, Eſquire, *againſt* Stockwell, Eſquire, and Huſband, Eſquire.

THREE ſeveral Outlawries had been pronounced about a Year ago, and tranſcribed into the *Exchequer*; one againſt both Defendants, a ſecond againſt Defendant *Stockwell*, and a third againſt Defedant *Huſband*; all at Plaintiff's Proſecution. *Penvold* and *Roberts*, authorized by Power of Attorney executed by Defendants, applied on their Behalf, and obtained a Rule to ſhew Cauſe why theſe Outlawries ſhould not be reverſed, at Plaintiff's Expence; Defendants at the Time when the Writs of *Exigent* iſſued and ſtill being in Parts beyond the Seas. On ſhewing Cauſe by Plaintiff it appeared, that Defendants had been abroad three Years, and probably never intended to return to *England*; and it was urged, that as they ſtay abroad longer than their lawful Occaſions required, ſuch Stay muſt be looked upon to be with a View to defeat Juſtice; and conſequently they were duly outlawed. That if not, they ought to bring their Writ of Error, and ſhould not be relieved in this ſummary Manner by Motion. The Court thought it diſcretionary in them to relieve by Motion, or put the Parties to a Writ of Error, according to the Circumſtances of the Caſe. Courts have gone further of late Years then heretofore, on Motions, as more effectual to expedite Juſtice, ſave Expence, and preſerve Credit and Character. It is difficult to determine, when Defendants Stay abroad to avoid Proceſs ſhall be taken to commence. There is no ſufficient Foundation for the Court to order Plaintiff to reverſe theſe Outlawries at his own Expence. But as they are not ſpecial, but only in Treſpaſs *Quare clauſum fregit*, Defendants have a Right to reverſe them at their own Expence, on entring common Appearances, and Payment of Coſts. Rule made accordingly. Defendants, before the Outlawries were tranſcribed into the *Exchequer*, might have reverſed them, on entring common Appearances and Payment of common Coſts, as far as the *Exigent*; but now, after they are tranſcribed, Coſts muſt be paid to the Time of Reverſal. *Prime* for Defendants; *Willes* for Plaintiff.

The King *againſt* Manby, on the Proſecution of French (deceaſed.) Eaſter 27 Geo. 2.

DEfendant was outlawed after Judgment, and taken by a *Capias utlagat'*. Objected by *Prime* for Defendant, That the Judgment of Outlawry appeared to be entred after Plaintiff's Death; and that the *Capias utlagat'* iſſued without a Revival of the Judgment. He quoted *Brownlow's Brevia judicialia*, and the Regiſter of Judicial Writs *fo.* 42. *A. B.* to ſhew Writs of *Scire facias* in ſuch Caſes brought by Plaintiff's Executors. Rule abſolute to ſet aſide *Capias Utlagatum*. *Wilſon* for the late Plaintiffs.

Reilley *againſt* O'Connor, Eſquire. Mich. 29 Geo. 2.

THE Outlawry commenced and compleated during Defendant's Reſidence in *Ireland*, was ordered to be reverſed at his Expence (without Bail or Appearance). Where the Court ſee an unlawful Proceeding they will not put the Party to the Expence of a Writ of Error, but will avoid Circuity and relieve him in a ſummary Way. *Prime* for Defendant; *Willes* for Plaintiff.

Barclay *againſt* Green. Hilary 30 Geo. 2.

DEfendant was outlawed while reſident at *Jamaica* for a Debt contracted in *England*, and was abroad when the Proceeding to Outlawry was firſt commenced. Motion by *Prime*, That the Outlawry be reverſed at Plaintiff's Expence with Coſts. *Vide antea, Reilley* againſt *O'Conner*, Eſq; *Mich.* 29 *Geo.* 2. Rule made to ſhew Cauſe; upon ſhewing Cauſe, Defendant appeared to be an abſconding Perſon, and that the Motion though in his Name was not made by him, but by a third Perſon, and the Matter appearing to be a Contention between Creditors, the Court would not exerciſe a diſcretionary Power ſo as to relieve Defendant in a ſummary Way; Plaintiff has had no Recompenſe for his Debt, the Court will not take from him the legal Advantage he has got, Defendant if he thinks fit may bring his Writ of Error. The Rule diſcharged. *Prime* for Defendant; *Davy* for Plaintiff.

Challing *againſt* Fox. Mich. 31 Geo. 2.

WRIT of *Superſedeas* to an *Allocatur* to the *Exigent* could not be ſealed in the Morning of the Day, whereon the *Allocatur* was returnable being Holiday; but was ſealed, and brought to the Sheriffs Office *London*, in the Afternoon about half an Hour after Defendant was returned outlawed, the Proceeding was by ſpecial Original in an Action on the Caſe on Promiſe, wherein the Damages were expreſſed requiring Bail. Motion and Rule to ſhew Cauſe why Defendant ſhould not have Leave to appear, and *Superſede* the *Exigent* on Payment of Coſts. Upon ſhewing Cauſe the Court was not willing to ſtrip the Plaintiff of an Advantage which he had fairly and regularly obtained: Before a Defendant is returned outlawed he may *Superſede* the *Exigent*, though founded on a ſpecial Original, and though the Debt be ever ſo large (as the old Practice ſtill continues). But after he is returned outlawed he cannot reverſe the Outlawry without Bail, who are to be abſolutely bound to pay the Money without Power to render the Principal in their Diſcharge. Ordered that Proceedings on the Outlawry be ſtayed on Payment of Plaintiff's Debt and Coſts within a Month, but in Default Rule diſcharged, and Plaintiff at Liberty to proceed on the Outlawry. *Prime* for Defendant; *Poole* for Plaintiff.

Oyer, &c.

Barber, Aſſignee of the Sheriff, *againſt* Satchwell, on a Bail-Bond. Trin. 17 & 18 Geo. 2.

BY a Judge's Order Defendant was allowed two Day's Time to plead, which expired 30th *May*. On the Day following, [31ſt *May*] Oyer of the Bail-Bond was demanded; which Demand,

mand, after the Time for Pleading expired, Plaintiff looked upon as a Nullity, and ſigned Judgment; which was held to be regular, and the Rule to ſhew Cauſe why the Judgment ſhould not be ſet aſide, was diſcharged. The Court ſeemed to think [*Capitalis Juſtic' ſolus*] that it was reaſonable Oyer might be demanded any Time before Judgment, but would not overturn the eſtabliſhed Practice. *Skinner* for Defendant; *Willes* for Plaintiff.

The Weavers Company *againſt* Ware. Action on a By-Law. Mich. 18 Geo. 2.

DEfendant prays Oyer, and a Copy of the Letters Patent ſet forth in the Declaration with a *Profert in Cur'*, and Plaintiffs give him Oyer and a Copy, for which Copy Defendant pays, and afterwards doth not make the Oyer Part of his Plea, but pleads the General Iſſue, *Non cul'*; Plaintiffs make up the Iſſue with Oyer; Defendant moves that the Oyer may be ſtruck out of the Iſſue; and upon hearing Counſel on both Sides, the Motion was denied. *Draper:* Giving Oyer is the Act of the Court, and when ſet out, is Part of the Declaration. Letters Patent are a Record, and *Non Conceſſit* pleaded doth not deny the Letters Patent, but the Operation thereof only. Action on Bail-Bond, in the Declaration not laid that the Bond was given to the Sheriff *per Nomen Officii*; Defendant pleads *Non eſt factum*, Plaintiff in his Replication ſets out the Bond by Way of Oyer, to help the Defect in the Declaration. *Per Cur':* Plaintiffs may by Replication pray an Inrolment *in hæc verba*, but cannot make Defendant pray Oyer in his Plea upon Record whether he will or no. Where Oyer is prayed, Plaintiffs have a Right to make the Oyer Part of Defendant's Plea. If no Oyer is prayed, an Inrolment proper. If Oyer prayed, no Inrolment. The Pleadings are ſuppoſed to be *Ore tenus* at the Bar, and a Record is to be made of what is done there. *Bootle* for Defendant; *Draper* for Plaintiff. Caſes cited for Plaintiffs, *Plow.* 491. 20 *H.* 7, 8. *Dyer* 133, 187. *Cro. Jac.* 679. *Stonehouſe* againſt *Read*, 1 *Lut.* 680. *Blewit* againſt *Appleby*, *Co. Lit.* 260. *a. Brook*, Tit. *Record*. *Aliter in Banco Regis*, *Mich.* 19 *Geo.* 2.

Pauper.

Eaſter 8 Geo. 2.

A Poor Man, Defendant in a Suit brought in this Court, applied in the *Treaſury* to be admitted to defend *in forma Pauperis,* but was denied: The ſtatute for admitting *Paupers* extends to Plaintiffs only, and not to Defendants. 11 *Hen.* 7. *cap.* 12.

Pleadings and Time to plead.

Gibſon *againſt* Cole. Hil. 6 Geo. 2.

A Rule to plead double, (*viz.*) *Non Aſſumpſit,* and a General Releaſe diſcharged, becauſe theſe Pleas are contradictory.

Cortizos *againſt* Munoz. Trin. 6 & 7 Geo. 2.

DEMURRER was joined in *Michaelmas* Term laſt, argued in *Hilary,* and Judgment given for Plaintiff. Defendant brought a Writ of Error, intending to aſſign for Error the Want of an Original: Whereupon Plaintiff entered the Demurrer and Judgment on a Roll of *Hilary,* having obtained an Original of that Term, though he had none of *Michaelmas.* Defendant moved that the Demurrer might be entered of *Michaelmas* Term; and upon hearing Council on both Sides, it appearing that the Demurrer was joined of that Term, the Court ordered it to be entered accordingly, purſuant to a general Rule of Court formerly made upon Complaint of the Clerk of the *Treaſury,* that all Iſſues ſhall be entered of the ſame Term wherein they are joined. *Baynes* for Defendant; *Chapple* for Plaintiff.

Halſey

Halſey *againſt* Feltham.

THIS was an Action of Treſpaſs for entring Plaintiff's Cloſe, and pulling down a Were. Defendant moved to plead double, (*viz.*) *Liberum tenementum*, and a Juſtification of pulling down the Were as a Nuſance, and a Rule *Niſi* was obtained; but was afterwards, on hearing Council on both Sides, diſcharged by the Court, the Matters prayed to be pleaded being inconſiſtent. *Baynes* for Defendant; *Chapple* for Plaintiff.

King *againſt* Boſwell. Mich. 7 Geo. 2.

DEFENDANT obtained a Rule *Niſi* to plead double, *Non Aſſumpſit* and *Non Aſſumpſit infra ſex annos.* Plaintiff ſhewed for Cauſe, that the Rule to plead was expired before the Motion to plead double was made; but Court held that Defendant was proper to move to plead double any Time before Judgment ſigned. *Birch* for Plaintiff; *Comyns* for Defendant.

Hartley *againſt* Varley. Hil. 7 Geo. 2.

SKINNER moved for *Oyer* of the Bond whereon this Action was brought, upon an Affidavit that it was not for Delay, but in order to plead Payment agreeable to the Fact; but the Court refuſed to make any Rule, *Oyer* not having been demanded in proper Time, (*viz.*) before the Rule for pleading expired.

Durſley *againſt* Cole.

THIS was an Action brought againſt an Inn-keeper for detaining two Horſes of Plaintiff's. *Eyre* moved to plead double, (*viz.*) Not guilty, and an Accord and Satisfaction, which he would have compared to *Non Aſſumpſit*, and *Non Aſſumpſit infra ſex annos. Hawkins* oppoſed the Motion. The Court denied to make any Rule, the Matters prayed to be pleaded being contradictory.

Martindale *againſt* Galloway, Executor, &c.

DARNALL moved for Defendant that he might have Leave to withdraw his Plea of Judgments, and Bonds pleaded in Bar, and plead *Plene adminiſtravit*, which, upon hearing *Chapple* for Plaintiff, was granted by the Court.

Reeves *againſt* Probart.

URLIN moved that Defendant might have Leave to withdraw his Plea of Tender, and plead the General Iſſue upon Payment of Coſts. The Court denied the Motion, becauſe this Alteration of the Plea would put Plaintiff to an Inconvenience, the Money pleaded to be tendered being brought into Court.

Hughes *againſt* Pellett, Adminiſtrator, Eaſt. 7 Geo. 2.

DEFENDANT had obtained an Order for Time to plead, pleading an iſſuable Plea, *&c.* and afterwards pleaded in Bar to the Plaintiff's Action (which was upon ſimple Contract) a Judgment confeſſed upon a Bond ſince the Order for Time to plead made. Plaintiff moved to ſet aſide the Plea; but the Court, upon hearing Council on both Sides, were of Opinion, that as there was no particular Reſtraint in the Order, and as the Bond (whereupon the Judgment was confeſſed) might have been pleaded in Bar to this Action, the Plea muſt ſtand. *Baynes* for Defendant; *Chapple* for Plaintiff.

Poole *againſt* Broadfield.

DEFENDANT pleads Bankruptcy, and concludes with an Averment, and not to the Country; to which Plaintiff demurred. Court held the Plea bad, and gave Judgment for Plaintiff. *Chapple* for Plaintiff.

Humfreys

Humfreys *againſt* Ward. Trin 7 & 8 Geo. 2.

COURT were of Opinion, that a Plea in Abatement, after the Rule for Pleading is out, is a Nullity, and Plaintiff may ſign his Judgment. *Hawkins* for Plaintiff; *Baynes* for Defendant.

Smith *againſt* Roe.

In Ejectment. DECLARATION of *Eaſter* Term to appear in *Trinity*. *Skinner* moved to be at Liberty to plead Antient Demeſne. A Rule was made to ſhew Cauſe; upon ſhewing Cauſe it was inſiſted for Plaintiff, that the Plea being to the Juriſdiction of the Court, is a Dilatory, and ought to have been pleaded within the firſt four Days of this Term; and of that Opinion were the Court, and diſcharged the Rule. Sir *George Cooke* quoted two Caſes in Point, determined in this Court, *Holdfaſt* againſt *Carlton*, *Hil.* 1 *Geo.* 2. and *Bingham* againſt *Barker*, *Trin.* 2 *Geo.* 2.

Adkin *againſt* Worthington, an Attorney.

EYRE for Defendant demurred, and ſhewed for Cauſe, that in the Memorandum it is not ſaid, Whether the Bill was in a Plea of Debt or Caſe, or in what Plea. *Chapple* for Plaintiff argued, that the Bill is ſet out *in hæc verba*, and ſhews itſelf. Judgment for Plaintiff.

Benn *againſt* Geary.

A Rule was made for Plaintiff to ſhew Cauſe why Defendant ſhould not plead double, (*viz.*) *Non Aſſumpſit* and *Non Aſſumpſit infra ſex annos*, Plaintiff, on ſhewing Cauſe, produced an Affidavit that Defendant had not appeared, and conſequently not being in Court was not proper to make the Motion. Rule diſcharged. *Chapple* for Plaintiff; *Birch* for Defendant.

Heathfield *againſt* Allen. Mich. 8 Geo. 2.

SKINNER for Defendant moved to plead double, *Non Aſſumpſit* and *Plene Adminiſtravit*, which was denied by the Court, no Affidavit being produced that Defendant had fully adminiſtred.

The Burgeſſes of Wiſbech *againſt* Frier.

URLIN moved for Defendant to plead double, *Solvit ad diem* and *Riens per Deſcent*. *Skinner*, for Plaintiff, objected, that an Affidavit of the fact as to *Riens per Diſcent* ought to be produced from the heir, as from an Executor or Adminiſtrator in a *Plene Adminiſtravit*, and the Objection was held good. No Rule.

Peirſon *againſt* Ives. Hil. 8 Geo. 2.

DEFENDANT pleaded *Non Aſſumpſit infra ſex annos*, and Plaintiff demurred to the Plea: the Matters in Queſtion being Actions between Merchant and Merchant; and Defendant thereupon moved to add to his former Plea a general *Non Aſſumpſit*, upon Payment of Coſts; but this was denied.

Burnand *againſt* Standing.

In Formedon. DEFENDANT pleaded Never Tenant of the Freehold in Abatement, and Plaintiff refuſed to accept the Plea; whereupon Defendant applied to the Court, and upon hearing Council on both Sides, the Plea was ordered to be received. It cannot be pleaded otherwiſe than in Abatement. *Baynes* for Defendant; *Darnall* for Plaintiff.

Nicholſon *againſt* Conſtable, Attorney. Eaſter 8 Geo. 2.

PLAINTIFF declared with a Memorandum upon a Bill, but omitted in the Memorandum the Words (*in a Plea of Treſpaſs upon the Caſe.*) Defendant demurred, and ſhewed this Omiſſion ſpecially for Cauſe. *Per Cur':* The Plea appears by the Bill, which is ſet forth *verbatim* in the Declaration. Judgment for Plaintiff. *Comyns* for Plaintiff; *Glyde* for Defendant. *Adkin* againſt *Worthington*, Attorney. *Trin.* 7 & 8 *Geo.* 2.

Jarratt *againſt* Robinſon.

HAWKINS moved to plead double, (*viz.*) *Non Aſſumpſit*, and ſeveral Matters ſet off againſt Plaintiff's Demand, which was denied *per Cur'*, as contradictory. The General Iſſue muſt be pleaded, with Notice to ſet off, purſuant to the Statute.

Marſhall *againſt* Lawrence. Trinity 8 & 9 Geo. 2.

SKINNER moved to plead double, *Nil debet* and *Nil habuit in tenementis*. Refuſed. *Per Cur':* The later may be given in Evidence upon the former.

Jury *againſt* Woodhouſe and others, Executors.

UPON the Trial of a Cauſe at *Niſi Prius*, in *Middleſex*, againſt the Defendants, at another Plaintiff's Suit, the Lord Chief Juſtice held a Leaſehold Eſtate (though not ſold) Aſſets in Defendant's Hands, *ad valorem*; and thereupon by Conſent, Proceedings were ordered to ſtay in the former Action until the Eſtate could be ſold. *Chapple* now moved that Plaintiff might perfect his Judgment in the former Action, and that Defendant might have four Days Time to plead that Judgment in Bar to this Action. *Darnall*, for Plaintiff, oppoſed the Motion; and it appearing that Defendants had obtained the Chief

Juſtice's Order for four Days Time to plead, which were expired, pleading to Iſſue, and taking Notice of Trial within Term, the Court refuſed to grant any Rule.

Handaſyd *againſt* Wilſon. Mich. 9 Geo. 2.

DEFENDANT pleaded to the *Sci. Fa.* upon his Recognizance of Bail, Payment by the Principal; to which Plaintiff replied Nonpayment, and tendered an Iſſue; whereupon Defendant demurred, and Plaintiff joined in Demurrer, moved for *Concilium*, and ſet down the Cauſe in the Paper to be argued. Defendant afterwards moved to withdraw his Plea, and plead *Nul tiel Record* of the Recognizance, which was denied by the Court on hearing Council on both Sides. *Skinner* for Defendant; *Chapple* for Plaintiff.

Raine *againſt* Spencer.

DEFENDANT pleaded Coverture as the Wife of *John Thompſon*, in this Manner, (*viz.*) *And the aforeſaid* Sarah Spencer, *&c.* Her Affidavit was in the ſame Stile, but ſigned *Sarah Thompſon:* The Plea was ſet aſide. *Chapple* for Plaintiff; *Skinner* for Defendant.

Napper *againſt* Biddle.

THE Declaration was of *Michaelmas* Term laſt, and Defendant pleaded in Abatement the fourth Day within *Hilary* Term then next, without a Special Imparlance. Plaintiff demurred to the Plea, and Defendant joined in Demurrer; whereupon Plaintiff made up the Book with a General Imparlance, and the Cauſe was ſet down in the Paper to be argued. *Chapple* moved for Defendant, that the General Imparlance might be ſtruck out of the Paper Book; inſiſting that the firſt four Days of *Hilary* Term were *ex gratia*, and that Defendant might then plead as of *Michaelmas* Term before. The Motion was oppoſed by *Belfield*, and no Rule was made; the Court declaring that in this Caſe Defendant could not plead in Abatement without procuring a Special Imparlance.

Macdonald *againſt* Gunter. Hilary 9 Geo. 2.

FORREST (Plaintiff's Attorney) delivered a very long Declaration for entering Plaintiff's Houſe, and taking and carrying away his Goods. *Forreſt* had in every Count repeated the Particulars contained in an Inventory of Defendant's Goods taken at the Time they were diſtrained for Rent, on account of which Diſtreſs this Action was brought, with ſome ſmall Variation in the Deſcription of the Goods, and laying the Treſpaſſes on different Days. Court, upon hearing Council on both Sides, (it appearing that the Action was brought for one and the ſame Treſpaſs,) ordered two of the Counts to be ſtruck out, and *Forreſt* to pay Coſts. *Wright* for Defendant; *Comyns* for Plaintiff and *Forreſt*.

Hutchins *againſt* Lillyman.

DEFENDANT's Attorney not being to be found, the Declaration was delivered to Defendant himſelf, and for want of a Plea Plaintiff ſigned Judgment. The Declaration was held to be irregularly delivered; but by Conſent, Matters in Difference were referred to the Prothonotary.

Newberry *againſt* Strudwick. Eaſter 9 Geo. 2.

ACTION of Debt brought on Judgment. Defendant pleads that Plaintiff had recovered a Judgment in *B. R.* To this Plaintiff replies *Nul tiel Record*, and delivers the Iſſue with a Day given in it for Defendant to bring in the Record at his Peril. Defendant inſiſts that the Replication of *Nul tiel Record* ſhould not be delivered in the Iſſue-Book, and Day given to bring in the Record, but that Plaintiff ſhould give him the Replication by itſelf in Form, and give a Rule to rejoin, therefore moved that Plaintiff ſhould take back the Iſſue delivered, and deliver a Replication in Form, and alſo repay the Money he took for the Iſſue. Rule to ſhew Cauſe. Upon ſhewing Cauſe, the Court were of Opinion that a Rejoinder in this Caſe is totally unneceſſary after a compleat Iſſue joined, and the Delivery of the Iſſue was right. Rule diſcharged. There is no Difference between a Record of this Court pleaded, and a Record of another Court; the Iſſue is compleat upon the Replication without the Rejoinder. Where Defendant avers the Record, and Plaintiff gives him a Day to bring it in, the Concluſion of the Replication is as follows, *viz. Et hoc parat' eſt verificare qualitercunque, &c. Et dictum eſt præfat' Def' quod habeat Record' ill' hic in Octab. Pur' Beatæ Mariæ ſub periculo ſuo, &c. Idem dies dat' eſt præfat' quer' hic, &c.* Where the Plaintiff avers the Record, the Concluſion of the Replication is thus, *viz. and prays that that Record may be ſeen and inſpected by the Juſtices here,* &c. And becauſe the ſaid Plaintiff hath not now that record ready here in Court, he is directed that he have that Record here in eight Days of *St. Martin*. The ſame Day is given to the ſaid Defendant here, *&c. Belfield* for Plaintiff; *Corbet* for Defendant.

Sydebotham *againſt* Frith, Attorney.

THE ſame Caſe and the ſame Determination as in *Adkin* againſt *Worthington, Trin.* 7 & 8 *Geo.* 2. *Comyns* for Plaintiff; *Belfield* for Defendant.

Stibbs *againſt* Neeves. Trinity 10 Geo. 2.

In Treſpaſs. BOOTLE moved for Defendant for Leave to plead doubly, *viz. Non cul'* and *Liberum tenementum* of the Liberty of *St. Catharine*'s, and obtained a Rule to ſhew Cauſe, which was afterwards made abſolute upon an Affidavit of Service, no Cauſe being ſhewn.

Peaſe *againſt* Badtitle.

In Ejectment. WYNNE moved after the firſt four Days of Term to plead Antient Demeſne, which was denied. It is a Plea to the Juriſdiction of the Court, and ought to be moved within the firſt four Days of the Term.

Reeks and Wiſe *againſt* Robins.

DEfendant being ſerved with Proceſs at the Suit of *Reeks* appeared, and a Declaration was delivered; a Declaration was alſo delivered by the By at the Suit of *Reeks* and Wife. Defendant applied to have the Proceedings ſtaid on the Declaration by the By, there being no Proceſs to warrant it; for though by the Practice of the Court Plaintiff might the ſame Term the Proceſs is returnable declare againſt Defendant as often as he would at his own Suit, yet he cannot declare by the By joined with his Wife or any other Perſon, and there is greater Reaſon for it ſince the Statute to prevent vexatious Arreſts, which requires Proceſs to be ſerved. The Proceedings in the Declaration by the By ſtayed. *Chapple* for Defendant; *Eyre* for Plaintiff.

Davenhill *againſt* Barritt. Mich. 10 Geo. 2.

AFTER Defendant had obtained a Judge's Order for Time to plead, pleading an iſſuable Plea, he pleaded a Tender; which Plea was ſet aſide as a Plea that could not be pleaded after Time to plead obtained. *Birch* for Plaintiff; *Eyre* for Defendant.

Sherlock *againſt* Templer.

DEfendant had demurred generally, and now moved for Leave to withdraw the Demurrer, and plead the General Iſſue. It was objected by Plaintiff, that by this Means he had been delayed of a Trial at laſt Aſſizes; but it appearing that the Parties had been before a Judge, and that Defendant had offered to withdraw his Demurrer, and plead the General Iſſue, Time enough for Plaintiff to have tried his Cauſe at laſt Aſſizes, the Motion was granted. *Chapple* for Defendant; *Eyre* for Plaintiff.

Bird *againſt* Spincks.

In Replevin. THE Court gave Leave to plead doubly, *viz.* that Plaintiff in Replevin had not Property, and a Juſtification as a Diſtreſs for Rent. *Chapple* for Defendant; *Parker* for Plaintiff.

Leighton *againſt* Leighton.

AFTER a Judge's Order for Time to plead, pleading an iſſuable Plea, Defendant moved to plead double Matter, and the Queſtion was, Whether a Rule for that Purpoſe ought to be granted or not? The Court took Time to conſider, and after conferring with the Judges of the other Courts, gave Defendant Leave to plead doubly, pleading iſſuable Pleas, and taking ſhort Notice of Trial. *Wright* for Defendant; *Hayward* for Plaintiff.

Shelly *againſt* Wright. Hilary 10 Geo. 2.

IN the Margent of the Declaration ſtood the Word *Middleſex*, and Defendant's Addition was *late of Weſtminſter*, without ſaying in the County aforeſaid. Defendant pleaded in Abatement, that it did not appear by the Declaration at what Place he was commorant. Plaintiff moved to ſet aſide the Plea, and obtained a Rule to ſhew Cauſe, which was diſcharged. It is not uſual to ſet aſide ſuch Pleas upon Motion. Plaintiff may demur if he thinks fit, as determined between *Norris* and *Friend*, *Hil.* 4 *G.* 2. *Skinner* for Plaintiff; *Hawkins* for Defendant.

Nevil *againſt* Fiſher.

DEfendant had pleaded *Non aſſumpſit infra ſex annos*, and moved to add to that Plea *Non aſſumpſit* generally, which was denied. After Defendant hath pleaded a ſingle Plea, he cannot have Leave to plead doubly. *Skinner*.

Barnett *againſt* Greaves.

In Treſpaſs. KEttlebey moved to plead doubly, Not guilty, and a Juſtification, which was denied as contradictory.

Buck *againſt* Warren, Attorney, in Caſe. Eaſter 10 Geo. 2.

On Promiſe. DEfendant paid 10 *l.* into Court on the common Rule, and afterwards obtained a Rule to plead double, *Non aſſumpſit* and *Non aſſumpſit infra ſex annos.* Plaintiff moved to ſet aſide the double Plea with Coſts, and had a Rule to ſhew Cauſe, which was made abſolute. Plaintiff by the Rule to pay Money into Court is confined to plead the General Iſſue, and no other Plea. The Motion afterwards to plead double is an Impoſition on the Court. *Chapple* for Plaintiff; *Gapper* for Defendant.

Croſſe *againſt* Porter. Mich. 11 Geo. 2.

PLaintiff declared on a Recognizance of Bail without ſetting forth the Condition. Defendant demurred generally. Court gave Judgment for Plaintiff. The Recognizance in the Declaration does not appear to be conditional, but abſolute; if conditional, Defendant might have pleaded *Nul tiel Record.* *Draper* for Plaintiff; *Comyns* for Defendant.

Church *againſt* Fendall. Eaſter 11 Geo. 2.

MOVED by *Agar* to plead two Juſtifications, *viz.* Damage-feaſant, and under a Demiſe from Defendant to Plaintiff. Chief Juſtice ſaid he thought them inconſiſtent; but as Defendant had obtained a Rule to ſhew Cauſe, and Plaintiff did not oppoſe it, the Rule muſt be abſolute.

Ford *againſt* Burnham. Trinity 11 & 12 Geo. 2.

DEfendant pleaded a Tender *ante diem impetracon' brevis Original'*. Plaintiff in his Replication ſet forth an Original purchaſed before the Time of the Tender pleaded. *Wynne* moved for Defendant for Oyer of the Original, but the Motion was denied. The Court never make any Rules for Oyer of Originals, which are Matters of Record.

Baynes *againſt* Lutwidge.

THE Court gave Defendant Leave to plead doubly, *viz.* a Diſtreſs for Damage-feaſant, and for Rent in Arrear. This is not ſtronger than Not guilty, and *Liberum Tenementum*, *Solvit ad diem*, and a mutual Debt, which have been granted. *Bootle* for Defendant; *Draper* for Plaintiff.

Weſt *againſt* Nichols. Mich. 6 Geo. 2.

A *Clauſum fregit* was iſſued in *Engliſh*, and Plaintiff declared in *Latin*. A Motion was made to ſtay the Proceedings, but denied, becauſe the Declaration in *Latin* is to be taken as a Declaration by the By.

Lunn *againſt* Smith.

THE Writ was returnable *Craſ. Trin.* and Bail filed in *Hilary* Term following. The Sheriff was amerced, and did not clear his Contempts till *Trinity* Term following, when Plaintiff tendered a Declaration, but Defendant refuſed to accept it; whereupon Plaintiff left it in the Office, and ſigned Judgment. The Queſtion was, What Time the Plaintiff had to declare? And it was held by the Court, that he had two Terms to declare after Defendant was in Court; but this Declaration, not being delivered till the third Term after Bail put in, was too late, and the Judgment was ſet aſide.

Androvin

Androvin *againſt* Baſſen, Bail for Miller. Hilary 6 Geo. 2.

THIS was an Action of Debt upon a Recognizance of Bail, wherein the Plaintiff had declared in the ſhort Manner now practiſed, without ſetting out the Condition of the Recognizance. Mr. Juſtice *Price* had made an Order for an Imparlance upon a Defect in the Notice given to Defendant of the Declaration being left in the Office, *&c.* Plaintiff moved to diſcharge the Order. Defendant on ſhewing Cauſe produced a Rule whereby the *Ca. Sa.* againſt the Principal was ſet aſide, and alledged that no *Ca. Sa.* had been ſince returned, and the Record of the Recognizance not being filed, and Defendant not being intitled to Oyer thereof could not plead the Want of a *Ca. Sa.* againſt the Principal, if that Matter is pleadable to ſuch ſhort Declaration. The Court declared no Opinion, but ſeemed inclinable to think that the Condition of the Recognizance doth not operate by Defeazance, but is Part of the Recognizance itſelf, and that Plaintiff ought to ſet out the Condition in his Declaration, and ordered the Plaintiff to file the Record of the Recognizance, but gave him Liberty to withdraw his former Declaration, and declare *de novo* if he thought fit.

Catlin *againſt* Elliott, Hunt *and* Drew. Hilary 7 Geo. 2.

UPON hearing Counſel on both Sides, three Declarations in Aſſault, Battery and falſe Impriſonment were ordered to be reduced into one, appearing upon the Face of the Declaration to be all for one and the ſame Fact, and in each of the three Plaintiff declaring againſt one of the Defendants for an Aſſault, *&c. ſimul cum* the other two. *Hawkins* for Defendants; *Birch* for Plaintiff.

Harper, an Attorney, *againſt* Woodhouſe and others.

THREE Declarations for one and the ſame Battery being ordered to be reduced into one, Plaintiff's Counſel prayed Coſts, but was denied. *Eyre* for Defendant; *Skinner* for Plaintiff.

Jeffs *againſt* Jones. Eaſter 7 Geo. 2.

TWO Actions were brought againſt the Defendant, one for an Aſſault and Battery, and the other in Treſpaſs, for taking away Plaintiff's Goods. Defendant moved that the two Declarations might be reduced into one, being for one and the ſame Treſpaſs. Rule made to ſhew Cauſe, which was afterwards diſcharged upon hearing Counſel on both Sides. Where there may be ſeveral Pleas, Actions ought not to be joined. *Chapple* for Plaintiff; *Hawkins* for Defendant.

Fotherby *againſt* Lloyd. Mich. 8 Geo. 2.

COURT held that a Declaration *de bene eſſe* may be delivered at any Time before the Expiration of the Time limited for appearing or putting in Bail, but never afterwards. This was a *Teſtatum* from *London* to *Briſtol* returnable *tres Mich.* and a Declaration was delivered *de bene eſſe October* 31. which was the laſt Day Defendant had by the Rules of Court to put in Bail. *Chapple* for Plaintiff; *Eyre* for Defendant.

Burnett *againſt* Kendall. Mich. 12 Geo. 2.

MOTION to ſet aſide Plea in Abatement, which came in two Days after Declaration left at *King*'s (Defendant's Attorney's) Chambers, under the Door, which was not found there till *November* 1. The Agent (Mr. *Buck.)* had appeared by *King* the Country Attorney, and Plaintiff had given no Notice to *Buck* the Agent of Declaration being filed or left. *Cur'*: Whether the Plea came regularly in or not is the only Queſtion, and the Declaration not being delivered, nor any Notice to *Buck* of its being filed, Let the Rule for ſetting aſide the Plea be diſcharged with Coſts, it being tricking Practice to put the Declaration under the Country Attorney's Chamber Door. *Skinner* for Defendant; *Urlin* for Plaintiff.

King

King *againſt* Nichols. Hilary 12 Geo. 2.

RULE to ſhew Cauſe why Defendant ſhould not have Leave to plead a Tender as of laſt Term, notwithſtanding the general Imparlance given by Plaintiff. Objected by Plaintiff's Attorney, that Defendant ought to have applied on the firſt Day of the Term. *Per Cur'* : He comes Time enough within the firſt four Days. Rule abſolute in the Treaſury, *January* 27.

Jones *againſt* Body. Draper for Defendant; Comyns for Plaintiff. Eaſter 12 Geo. 2.

RULE made abſolute to plead double, *Non Aſſumpſit*, and Defendant's Diſcharge under the Inſolvent Debtors Act. 10 *Geo*. 2.

A Rule this Term, *Liſle* againſt *Jenyns*, had been made to ſhew Cauſe, and abſolute on Affidavit of Service (no Cauſe being ſhewn) to plead *Non eſt factum*, and Defendant's Diſcharge under ſaid Act.

Potts *againſt* Creſwell, Attorney.

DEfendant moved that Plaintiff might inſert the true Day of filing Bill, (*viz. February* 3. laſt) in the *Memorandum* at the Head of his Declaration, and that Defendant might have Leave to plead a Tender of laſt Term, the Declaration not having been delivered till after the Term. The Rule to ſhew Cauſe was made abſolute on hearing Counſel on both Sides. *Draper* for Defendant; *Agar* for Plaintiff.

Calveraq *againſt* Pinhero. Trinity 13 Geo. 2.

Upon an Iſſue of Nul tiel Record. PLaintiff delivered the Book, and gave himſelf a Day to bring in the Record, *viz. tres Trin. July* 8. but did not bring in the Record on that Day. *July* 9. Plaintiff offered the Record, and moved it might be read, which was refuſed by the Court, it not being brought in on the Day Plaintiff had given himſelf to produce it. *Wright* and *Hayward* for Plaintiff; *Burnett* for Defendant.

Uſher, and others, *againſt* Edmunds. Mich. 13 Geo. 2.

MOTION by *Skinner* to withdraw his Plea of the General Iſſue, and plead the ſame *de novo*, and pay Money into Court. Defendant's Attorney happening to die before Payment of Money into Court as ordered by Defendant; and his Clerk having delivered the Plea by Miſtake; Rule to ſhew Cauſe. *Agar* ſhewed Cauſe. *Cur'*: The Rules of the Court are againſt the Motion; but in the Accident of Death the Rules muſt be diſpenſed with. Rule abſolute.

Lumley *againſt* Foſter.

ATTORNEY ſwears to the Truth of Plea in Abatement: And the Queſtion was, Whether Defendant ſhould not have made Oath himſelf. *Per Cur'*: Probable Cauſe is ſhewn, which is all required by the Statute. Rule to ſhew Cauſe why the Plea ſhould not be ſet aſide, diſcharged. *Prime* for Plaintiff; *Draper* for Defendant.

Wood *againſt* Grace, an Attorney.

THIS was an Action for a Surgeon's Attendance, Medicines, *&c.* wherein Plaintiff's Attorney delivered a Declaration of nine Counts. Defendant obtained a Rule to ſhew Cauſe why the Declaration ſhould not be reduced to three Counts. Upon ſhewing Cauſe, the Court ordered four Counts to be ſtruck out, and the remaining five to ſtand, *viz. Indebitatus Aſſumpſit* and *Quantum meruit*, for Work and Labour; the like for Goods ſold and delivered, and an *Indebitatus Aſſumpſit* for Money laid out for Defendant's Uſe, which will be ſufficient to take in Plaintiff's whole Demand. *Ketelbey* for Defendant; *Agar* for Plaintiff.

Turner *againſt* Bean.

AFTER a *Certiorari* returned, whereby the Proceedings in an inferior Court of Record were removed into this Court, the Queſtion was, Whether or no Plaintiff ſhould declare *de novo*, it appearing by the Return that the Parties were at Iſſue in the Court below. Held that Plaintiff muſt declare *de novo*. *Prime* for Plaintiff; *Bootle* for Defendant.

Fitzwilliams *againſt* the Biſhop of Hereford and the Univerſity of Cambridge, in Quare Impedit. Trin. 13 & 14 Geo. 2.

HAyward, for Defendants moved for an Imparlance, the Declaration having been delivered after the Eſſoign Day, *viz.* 4th *June*. *Draper*, for Plaintiff, produced a peremptory Rule to plead, after which there can be no Imparlance. The Rule to ſhew Cauſe was diſcharged; but the Court gave Defendants a Month's Time to plead.

Dowding, Adminiſtrator, *againſt* Baker and others.

THIS was an Action of Debt on Bond, Declaration delivered of *Trinity* Term laſt, with an Imparlance till *Michaelmas* Term; in that Term Defendants procured a Judge's Order for Time to plead till the 15th *December*, and then pleaded *Solvit ad diem* by one of the Defendants; in *Hilary* Term Plaintiff replied Nonpayment; and Defendants the ſame Term rejoined, and entred a Waiver of their Plea, and ſet out Letters Teſtimonial, dated 26th *November*, whereby it appeared, that Plaintiff was excommunicated 23d *November*, and ſo plead the Excommunication *puis darrein Continuance*; in *Eaſter* Term following, Plaintiff demurs, and Defendants join in Demurrer. *Bootle* for Defendants alledged, that Plaintiff, in making up the Demurrer-Book, had continued the Imparlance from *Trinity* Term till the laſt Return of *Michaelmas* Term, which is 25th *November*, though the Plea was delivered generally of that Term, and the Imparlance ought to be carried no farther than *Tres Mich.* which is the conſtant

Practice. That by Plaintiff's continuing it beyond 23d *November*, an Abſurdity was created, and Defendants would thereby loſe the Benefit of their Defence, for that the Excommunication would then appear to be before, and not after the laſt Continuance. *Draper* for Plaintiff inſiſted, that it is Plaintiff's Right to enter Continuances by Imparlance, from the Declaration to Judgment or Iſſue; that Time to plead, and an Imparlance, are the ſame Thing; and as Defendants, in Truth, had Time to plead till 15th *December*, the Imparlance ought to be continued, according to the Fact; and of that Opinion was the Court, and ordered the Imparlance to be continued till *Tres Mich.* agreeable to the common Practice, and from thence till *Quinden' Martini*, agreeable to the Fact.

Harriſon *againſt* Morris and others, in Treſpaſs. Mich. 14 Geo. 1.

A Rule to ſhew Cauſe why Defendant *Roads* ſhould not have Leave to withdraw the General Iſſue, pleaded by Miſtake, and join with the other Defendants in pleading a Special Juſtification, upon Payment of Coſts, was made abſolute, no Delay or Inconvenience being occaſioned to Plaintiff thereby. *Bootle* for Defendant *Roads*; *Prime* for Plaintiff.

Wells *againſt* Trehern, an Attorney.

PER *Cur'*: Claim of Cognizance by the Univerſity of *Oxford* diſallowed as coming too late, after Plea pleaded and Replication tendering an Iſſue. Rule to ſhew Cauſe why Claim of Cognizance ſhould not be allowed was diſcharged.

Dunn *againſt* Hutt, in Trover.
Dunn *againſt* Hutt, in Aſſumpſit.

TWO Declarations by the By delivered 16th *October* next before this Term, (after Declaration in Chief delivered in *Eaſter* Term laſt) were held to be out of Time, and could not be regularly delivered after the Term in which the Writ was returnable.

turnable. An Agreement to receive the Declarations by the By was ſworn upon Defendant's Attorney, but he denied it by Affidavit. Rule abſolute to ſtay Proceedings. *Agar* for Defendant; *Ketelby* for Plaintiff.

Lloyd, Aſſignee of the Sheriff, *againſt* Cullum, upon a Bail-Bond.

THE *Capias* in the Original Action was returnable *Menſ. Mich.* and the Bail-Bond aſſigned 17th *November*, and Proceſs ſerved thereupon, returnable *Quinden' Martini*, whereto Defendant appeared; and in laſt Vacation Plaintiff declared generally of *Michaelmas* Term, with an Imparlance till this Term. Defendant demurred, and Plaintiff joined in Demurrer, and delivered the Demurrer-Book made up of this Term. Defendant obtained a Rule to ſhew Cauſe why the Entry of the Declaration ſhould not be made generally of *Michaelmas* Term, as delivered. *Per Cur'*: This Rule ſhall be diſcharged, but every Thing ought to be entered according to Truth. Let the Declaration be amended by intitling it in fifteen Days of St. *Martin* in *Michaelmas* Term. Let the Demurrer be withdrawn, and Defendant have four Days to plead *de novo*. *Bootle* for Defendant; *Skinner* for Plaintiff.

Coſens, Attorney, *againſt* Etherington, Executor. Trinity 14 & 15 Geo. 2.

A Rule was made to ſhew Cauſe why Defendant ſhould not plead doubly, *viz.* a ſpecial *Plene Adminiſtravit*, and a Set-off, without an Affidavit; and no Cauſe being ſhewn, the Rule was made abſolute. *Bootle* for Defendant.

Steele and others *againſt* Pindar, in Trover. Mich. 15 Geo. 2.

A Rule to ſhew Cauſe why Defendant ſhould not plead doubly, *viz.* Not guilty, and A General Releaſe from one of the Plaintiffs. The Court have been too nice in the Conſtruction of the Act of Parliament for pleading doubly, which is general, and a remedial Law. Theſe Pleas are not abſolutely contradictory; the Releaſe is general, and not particular, and cannot in this Caſe be given in Evidence under the Not guilty. *Draper* for Defendant; *Bootle* for Plaintiffs.

Garnett, Attorney, *againſt* Harriſon and Freeman, Executors.

RULE to ſhew Cauſe why Defendants ſhould not plead *Non Aſſumpſit*, and *Plene Adminiſtraver*, was made abſolute, without an Affidavit from Defendants that they have fully adminiſtered. Before Lord Chief Juſtice *Eyre*'s Time this Affidavit was not required, and it is not reaſonable to expect it for the future. Pleading doubly is a Privilege Defendants are intitled to by Act of Parliament. The Court give Leave to plead *Non Aſſumpſit*, and *Non Aſſumpſit infra ſex Annos*, without an Affidavit; and that is a Caſe more within the Party's Knowledge than a *Plene Adminiſtraver*. If either of the Pleas are falſe, Coſts are given by the Statute. *Gapper* for Defendants; *Draper* for Plaintiff.

Thornhill *againſt* Tunnard.

RULE to ſhew Cauſe why Defendant ſhould not withdraw his Avowry, and avow Property in a Stranger, was made abſolute. *Birch* and *Draper* for Defendant; *Bootle* for Plaintiff.

Clixby *againſt* Dinas.

DEfendant was ſued by the Name of *Finis Dinas*; he pleaded in Abatement, that his Name was *Phineas*, and not *Finis*; but both the Plea and Affidavit to verify it were intitled, *In a Cauſe between* Clixby, *Plaintiff, and* Finis Dinas, *Defendant*. Rule to ſhew Cauſe why the Plea ſhould not be ſet aſide, was made abſolute. *Bootle* for Plaintiff; *Agar* for Defendant.

Lacy *againſt* Lock, in Treſpaſs. Eaſter 15 Geo. 2.

RULE made abſolute to plead doubly, (*viz.*) Not guilty, and 4 *l.* 4 *s.* paid Plaintiff in Satisfaction for all Treſpaſſes to ſuch a Time. *Draper* for Defendant; *Willes* for Plaintiff.

Fleming, Clerk, *againſt* Betts and Blake, in Treſpaſs, for placing a Stile in Plaintiff's Fence, and cutting down Trees.

RULE diſcharged to ſhew Cauſe why Defendant ſhould not plead doubly, Not guilty, and a Licence. *Draper* for Defendant; *Prime* for Plaintiff.

Goddard and Martin *againſt* Ballard and his Wife, Executors. Trinity 16 Geo. 2.

RULE made abſolute to plead doubly, *viz. Ne unques Exec'*, and *Plene Adminiſtravit*; no Cauſe being ſhewn to the contrary.

Salmon *againſt* Aldrich. Hilary 16 Geo. 2.

RULE to ſhew Cauſe why Defendant ſhould not withdraw his Plea of Tender, and plead the General Iſſue, and pay Money into Court upon the Common Rule, was diſcharged. The Court will permit Defendant to withdraw a Special Plea, and plead the General Iſſue; but after Plea pleaded, cannot give him Leave to bring Money into Court without Plaintiff's Conſent. *Draper* for Plaintiff; *Agar* for Defendant.

Rutter *againſt* The Biſhop of Hereford and the Univerſity of Cambridge, &c. in Quare Impedit. Eaſter 16 Geo. 2.

RULE to ſhew Cauſe why Defendants ſhould not plead nine different Matters, (denying all the Facts in the Declaration) diſcharged. And the Court refuſed to grant a Commiſſion to examine touching ſecret Truſts for Papiſts, according to the Statute, without the Univerſity's Conſent to plead the Popiſh Act only. *Draper* for Plaintiff; *Hayward* for Defendant.

Hall *againſt* Lane, in Caſe on ſeveral Promiſes.

THE Court gave Defendant Leave to plead Bankruptcy to the firſt Count, and to pay Money into Court on the Common Rule, and plead the General Iſſue to the other Counts. *Willes* for Plaintiff; *Agar* for Defendant.

Brewer *againſt* Mathews, in Treſpaſs.

DECLARATION was delivered ſo late laſt Term, that Defendant had not Time to move to plead doubly, but, to prevent Judgment, pleaded *Liberum Tenementum*. Plaintiff replied, and Defendant demurred. Plaintiff applied for Leave to amend the Replication, and Defendant to withdraw his Plea, and plead *Non cul'* and *Liberum Tenementum*. A Rule was made to ſhew Cauſe upon Defendant's Motion and afterwards diſcharged, the Pleas being contradictory. Where the *Locus in quo* is aſcertained by the Declaration (as in this Caſe) *Liberum Tenementum* is no Plea. It is only neceſſary where the Treſpaſs is laid generally, to put Plaintiff upon making a new Aſſignment. No Affidavit is produced to verify that Defendant's Caſe requires both Pleas for his Defence. *Bootle pro* Plaintiff; *Wynne pro* Defendant.

Rolle, Eſquire, *againſt* Lytton and others, in Treſpaſs.

RULE to ſhew Cauſe why ſome of Defendants ſhould not plead two Matters, *viz. Non cul'*, and, that the Premiſſes in Queſtion are the Freehold of Sir *William Courtenay*, Baronet, diſcharged. The Place is aſcertained by the Declaration; and Plaintiff may give the ſame Evidence on the General Iſſue as on both Pleas. *Belfield* for Plaintiff; *Draper* for Defendant.

Prinnel *againſt* Preſton, in Treſpaſs, for erecting a Shed in Plaintiff's Cloſe called the Yard.

MOTION, without an Affidavit, to plead Not guilty, and a Licence. Where the Pleas are contradictory, Defendant ſhould make appear by Affidavit that it is neceſſary for his Defence to inſiſt upon both. If the Treſpaſs be by Cattle, the Nature of the Caſe is ſufficient, an Affidavit is not neceſſary, becauſe the Matter may be without the Party's Knowledge. If by the Party himſelf, he muſt move upon Affidavit. The Court have never admitted Not guilty, and a Releaſe of a particular Treſpaſs; though they have admitted Not guilty, and a General Releaſe, where an Affidavit was produced.

Burnand *againſt* Burnand. Trinity 16 & 17 Geo. 2.

RULE abſolute to plead *Non cul'*, and *Son Aſſault Demeſne*, (No Cauſe ſhewn) *Prime* for Defendant.

Bayley *againſt* Houldſton.

THE Writ was returnable in *Eaſter* Term, and the Declaration, which was delivered the Day before the Eſſoign-Day of this Term, was ſent *per* Poſt to *Shrewſbury* the ſame Day. Defendant's Agent could not have Inſtructions to plead a Tender within the firſt four Days of this Term, but moved as ſoon as he could. Rule to plead a Tender. *Skinner* for Defendant; *Prime* for Plaintiff.

Lawrence *againſt* Playford.

RULE obtained upon Affidavit to ſhew Cauſe why Defendant ſhould not plead three Pleas, *Non cul'*, *Son Aſſault Demeſne*, and *Molliter manus impoſuit*, made abſolute to plead the firſt and laſt, rejecting the ſecond. *Willes pro* Plaintiff; *Prime* for Defendant. The Caſe made by the Affidavit not making it neceſſary for Defendant's Defence to plead the ſecond.

Banks *againſt* Bulcock, Executor. Mich. 17 Geo. 2.

RULE abſolute, upon Affidavit of Service, to plead *Non eſt factum*, and *Ne unques Executor*. *Prime* for Defendant.

Briſtow *againſt* Trappett, in Treſpaſs and Aſſault.

RULE made abſolute to plead doubly, *Nul cul'*, and *Son Aſſault Demeſne*. By Defendant's Affidavit the Aſſault appeared to be juſtifiable. He has a Right to plead the Special Plea, but is under a doubt whether without it the General Plea will be ſufficient or not. He takes upon himſelf the Proof of a Colateral Matter by adding the Special Plea. If Plaintiff recovers, he will have full Coſts, without a Certificate, though the Damages ſhould be under 40 *s*. *Prime* for Defendant; *Willes* for Plaintiff.

Lannie *againſt* Fieldhouſe, in Treſpaſs, Aſſault and Maim. Hilary 17 Geo. 2.

NOT guilty, *Son Aſſault Demeſne*, and Satisfaction for all Treſpaſſes, not a particular Treſpaſs, allowed to be pleaded; and Rule giving Defendant Leave to plead the ſame, made abſolute. *Skinner* for Defendant; *Hayward* for Plaintiff.

Bingham *againſt* Davis.

RULE was made abſolute, giving Defendant Leave to plead a Tender of Money of laſt Term, notwithſtanding the General Imparlance. Defendant's Agent, though he appeared in Time, had no Notice of the Declaration till the firſt Day of this Term; and on the 26th *January* he obtained a Judge's Summons. *Hayward* for Defendant; *Birch* for Plaintiff.

Bullythorpe *againſt* Turner, in Replevin. Eaſter 17 Geo. 2.

THE Court held, That the particular Place of taking Goods, *&c.* ought to be inſerted in every Declaration in Replevin; and that *Cepit in alio Loco* is to be conſidered as a Plea in Bar, and not in Abatement. No Affidavit is requiſite to be filed therewith, nor is it neceſſary to be pleaded within four Days after the Declaration delivered. *Reſolutio Curiæ.*

The King *againſt* The Archbiſhop of York, in Quare Impedit. Eaſter 18 Geo. 2.

RULE to ſhew Cauſe why Defendant ſhould not have Leave to plead doubly, diſcharged. The ſtatute 4 *Anne*, *chap.* 16. does not extend to Suits where the King is a Party, unleſs for Debt immediately owing, or Revenue. *Vide* 24th Sect. of the Statute.

Benſon *againſt* Hemming. Trinity 18 & 19 Geo. 2.

PLAINTIFF's original Demand was 15 *l.* 3 *s.* 9 *d.* Defendant gave Notice to ſet off, but took no Advantage under it; proving on the Trial Payments in Part, which reduced the Debt to 1 *l.* 13 *s.* 9 *d.* and that Sum the Jury gave Plaintiff in Damages. Defendant obtained a Rule to ſhew Cauſe why he ſhould not have Leave to enter a Suggeſtion on the Roll (purſuant to the Statute 1 *W.* & *M.* ſetting up Courts of Conſcience in *Briſtol* and *Glouceſter*:) That the Parties are both Inhabitants of *Glouceſter*, and the Debt recovered under 40 *s.* Plaintiff's Counſel quoted a Caſe in *B. R. Pitts* againſt *Carpenter*, *Trinity* 16 & 17 *Geo.* 2. where a Croſs Demand of 3 *l.* 2 *s.* had been proved by Way of Set-off, and thereby Plaintiff's Original Debt of 4 *l.* 15 *s.* was reduced to 1 *l.* 13 *s.* 3 *d.* After the Benefit of ſaid Set-off, the Court denied Leave to Defendant to enter Suggeſtion. This Court was of the ſame Opinion as the Court of King's Bench. The Demand in the Caſe quoted was reduced by Defendant's Act; it was not known to Plaintiff, at the Time of bringing his Action, whether Defendant would take Advantage of a Set-off or not. The Inferior Court has no Juriſdiction for a Debt above 40 *s.* But this Caſe differs from that quoted here; no Set-off is uſed, but Payment proved under the *Non Aſſumpſit*. The original Debt, which was the Cauſe of Action, appears to be no more than 1 *l.* 13 *s.* 9 *d.* Defendant's ſubmitting to the Juriſdiction of this Court doth not take away his Remedy after Verdict, he now comes *primo inſtante*. The Suggeſtion may be traverſed as to Inhabitancy. Rule for Leave to enter Suggeſtion abſolute. The *London* Court of Conſcience, Act 3 *Jac.* 1. *chap.* 15. is a good Statute; and though this Act relating to *Briſtol* and *Glouceſter* be inaccurately penned after a good Precedent, yet the Court is bound by it. *Skinner* for Plaintiff; *Willes* and *Draper* for Defendant.

Thompſon *againſt* Atkinſon, in Covenant broken. Mich. 19 Geo. 2.

JUNE 20th 1745 Defendant obtained a Judge's Order for a Fortnight's Time to plead, pleading an iſſuable Plea, and taking ſhort Notice of Trial. Defendant pleaded a general Performance of Covenants (not ſigned by Counſel), which was held to be no iſſuable Plea, and ſet aſide. Coſts to attend the Event. *Prime* and *Wynne* for Plaintiff; *Skinner* for Defendant.

Smith *againſt* Philips, one, &c. Hilary 19 Geo. 2.

BILL intitled generally of *Michaelmas* Term; Declaration with a Memorandum of the 23d *October*; after which Day, and before 25th *November*, the true Day of filing the Bill, the

Defendant had tendered Money to Plaintiff. *Willes*, for Defendant, moved, after the firſt four Days of this Term, that the 25th *November* might be inſerted in the Memorandum inſtead of 23d *October*, in order that Defendant might plead a Tender. No Rule. Defendant is too late to plead a Tender, after a general Imparlance. He ſhould have applied within the firſt four Days of this Term.

Tayler *againſt* Wittall, in Treſpaſs and Aſſault. Trin. 19 & 20 Geo. 2.

RULE made for Leave to plead three Pleas, (*viz.*) *Non Cul'*, *Son Aſſault Demeſne*, and *Molliter Manus impoſuit*. *Belſield* for Defendant; *Wynne* for Plaintiff.

Harman *againſt* Dunn, for Words. Mich. 20 Geo. 2.

RULE made abſolute for Defendant to plead Not guilty, and a Juſtification. *Wynne* for Defendant; *Skinner* for Plaintiff.

Haddock *againſt* Howard. Hilary 20 Geo. 2.

DEFENDANT, whilſt a Feme ſole, was arreſted in the Palace Court, and a Day or two after the Arreſt married, and then removed the Plaint by *Ha. cor.* into this Court, and pleaded her Coverture in Abatement. Rule to ſhew Cauſe made abſolute to ſet aſide the Plea, upon hearing Counſel on both Sides.

Crabb, Clerk, *againſt* Button, Clerk, Executor.

RULE made abſolute to plead two Pleas, *viz.* *Ne unques Executor'*, and *Plene Adminiſtravit*. *Draper*: Defendant is ſued as an Executor *de ſon Tort*, and it is dangerous for him to rely on the firſt Plea; he knows not whether the Act he has done makes him Executor, or not. If he has done Wrong, he has made Satiſfaction. *Plene Adminiſtravit* is within his own Knowledge. *Draper* for Defendant; *Wynne* for Plaintiff.

Hariſon *againſt* Speight, Tranſitory Action of Treſpaſs for taking and carrying away Brackens. Eaſter 20 Geo. 2.

LEAVE given Defendant to plead two Pleas, *viz.* Not guilty, and a Juſtification; preſcribing as Owner and Occupier of Defendant's Meſſuage, *&c.* and becauſe Plaintiff wrongfully cut down the Brackens, Defendant took them as belonging to him. This is not ſtronger than Not guilty, and *Liberum Tenementum*. *Bootle* for Defendant; *Skinner* for Plaintiff.

Smith, one, &c. *againſt* Lodge, for Words. Trinity 21 Geo. 2.

RULE made abſolute for Defendant to plead two Pleas, (*viz.*) Not guilty, and a Juſtification as to the Truth of the Words, which Words imported, That Plaintiff was perjured in an Affidavit he had made. If the Words are true, Defendant may be trapped, by imagining that he may give the Truth of the Words in Evidence on the General Iſſue. There are no other Pleas in Actions for Words but theſe two, and if the Rule be denied, the Court muſt determine Actions for Words to be out of the Statute for pleading doubly. *Bootle* for Defendant; *Prime* for Plaintiff.

Penvold *againſt* Thomlinſon, one, &c. By Bill.

DEFENDANT moved to ſtay Proceedings, the Declaration having been delivered without the uſual Memorandum. The Court gave Plaintiff Leave to amend, by inſerting the Memorandum, on Payment of Coſts. *Bootle* for Defendant; *Prime* for Plaintiff.

Browne *againſt* Hagan. Eaſter 21 Geo. 2.

RULE to ſhew Cauſe why Defendant ſhould not have Leave to plead a Tender of Money of laſt Term, notwithſtanding the General Imparlance, made abſolute on Payment of Coſts, though the Application was not made within the firſt four Days of this Term, according to the General Practice; it appearing that the Declaration was not delivered till the Day before the Eſſoign Day of this Term; and that Defendant's Agent, who was obliged to write into *Suffolk*, had applied almoſt as ſoon as he poſſibly could. *Belſield* for Plaintiff; *Bootle* for Defendant.

Jones *againſt* Davis and his Wiſe. Same Term.

DEFENDANT had pleaded four Pleas, as by Leave of the Court, though he had obtained no Rule for that Purpoſe, but a Judge's Order. Plaintiff moved, that either three of the four Pleas, or the Words [*By Leave of the Court*] might be ſtruck out. The Statute giving the Power of Leave to plead ſeveral Matters to the Court only, the Pleas were held to be improperly pleaded; but the Court gave Defendant Leave to plead the ſame four Pleas *de novo* of this Term, on Payment of Coſts. *Draper* for Defendants; *Belſield* for Plaintiff.

Hill *againſt* Williams, Aſſignee, &c.

DEFENDANT had pleaded a Tender made 13 *January*; Plaintiff replied an Original Teſte 2d *January*. On Defendant's Application, the Court of Chancery had ordered the Teſte of the Special Original ſued out by Plaintiff to be altered from 2d *January* (the common Teſte Day of an Original returnable *Oct. Hil.*) to 16th *January*, the true Day on which the Inſtructions for this Original were left with the Curſitor. As the Original, thus altered, would not anſwer Plaintiff's Purpoſe, the Tender having been made before 16th *January*, he took the Money brought in with the Plea, out of Court, entered an Acquittal, and gave Defendant Notice that he would proceed no farther, refuſing to pay Defendant's Coſts; whereupon, on Defendant's fendant's Motion, a Rule was made for Plaintiff to ſhew Cauſe why the Entry of Acquittal ſhould not be ſet aſide, with Coſts; or why Plaintiff ſhould not pay Defendant the Coſts he had been put to on Account of this Action. On ſhewing Cauſe, the Court held, that after Plaintiff had replied, he ought not to have entered an Acquittal, without Leave of the Court. And with Regard to the Replication, it (as the Original was altered) ought not to ſtand; and that though Plaintiff may take out of Court the Money tendered, and make an Entry of Acceptance before Replication, yet ſtill he muſt pay Coſts. The Replication to the Tender is a Refuſal to accept the Money. Rule to ſet aſide the Entry of Acquittal, and that Plaintiff be at Liberty to withdraw his Replication, on Payment of Coſts of that Replication, and reply *de novo*. *Draper* for Defendant; *Poole* for Plaintiff.

Lamb and his Wife *againſt* Goodenough, Clerk, Executor. Eaſter 21 Geo. 2.

A. R. as Defendant's Attorney had, eleven Years ago, without Defendant's Orderor Privity, fraudulently pleaded two Judgments, one on Bond to himſelf, the other on Bond to a Perſon to whom he was Executor, after he knew them ſatisfied, having himſelf received the Money. On Defendant's Motion a Rule was made for Plaintiff to ſhew Cauſe why theſe Judgments ſhould not be ſtruck out of the Plea, on Payment of Coſts, and *A. R.* was ordered to anſwer the Matters in the Affidavits. On hearing all Parties, a Rule was made by Conſent, That *A. R.* ſhould pay Plaintiff's Coſts *ab initio*; and thereupon Plaintiff ſhould diſcontinue; and that *A. R.* ſhould pay Coſts of the Application to Plaintiffs and Defendant, and that no Action be brought by Defendant againſt *A. R.* for any thing relating to this Cauſe. *Prime* and *Belſield* for Plaintiff; *Skinner* for *A. R.* *Poole* for Defendant.

Alderſon *againſt* Dodding. Mich. 22 Geo. 2.

RULE to ſhew Cauſe why Defendant ſhould not plead Not guilty, and a Tender, diſcharged. As the Pleas are contradictory, the former denies, the latter admits. *Prime* for Plaintiff; *Bootle* for Defendant.

Roberts, Adminiſtrator, *againſt* Hughes. Eaſter 22 Geo. 2.

DEFENDANT demurred to an inſufficient Declaration of *Hilary* laſt; Plaintiff thereupon, by Virtue of a Judge's Order, amended his Declaration, on Payment of Coſts; and this Term gave a new Rule to plead. Defendant moved for Leave to plead a Tender as of laſt Term, or that Plaintiff might make his Declaration of this Term. Rule to ſhew Cauſe made abſolute. *Skinner* for Defendant; *Draper* for Plaintiff.

Merefield *againſt* Hulls. Trinity 24 Geo. 2.

RULE made abſolute to plead *Non eſt factum*, and *Dureſs*. Theſe Pleas are not contradictory; one is a General, the other a Special *Non eſt factum*. *Eyre* for Defendant; *Agar* for Plaintiff.

Lacy and Garrick *againſt* Barry, in Covenant. Mich. 24 Geo. 2.

BREACH aſſigned for acting at *Covent-Garden* Theatre, contrary to Articles. Rule abſolute for Leave to plead doubly, *viz.* firſt, That Plaintiffs do not act under Letters Patent, or Licence from Lord Chamberlain; and ſecondly, That Defendant is not qualified to act under ſuch Letters Patent or Licence. Unleſs *primâ facie* the Pleas appear to be frivolous, the Court, on Motion, will not conſider whether they are material or not. Plaintiffs may demur. *Draper* for Defendant; *Willes* and *Poole* for Plaintiffs.

Herbert *againſt* Flower and others, in Trover. Trin. 24 & 25 Geo. 2.

RULE to ſhew Cauſe why Defendants ſhould not plead doubly, Not guilty, and that Plaintiff became a Bankrupt, and his Effects were aſſigned, diſcharged. Theſe Pleas are not both neceſſary for the Defence, they amount to an Inverſion of the Action, and pleading Property in Defendant. The latter may be given in Evidence on the former; on *Non Aſſumpſit* every Thing may be given in Evidence but a general Releaſe. *Bootle* for Defendant; *Prime* for Plaintiff.

Whaley *againſt* Harriſon and others. Mich. 25 Geo. 2.

THE Declaration was delivered laſt Vacation, with an Imparlance till the firſt Return of this Term; Defendants, within the firſt four Days of this Term, moved, and had a Rule to ſhew Cauſe why they ſhould not plead three Pleas, (*viz.*) *Non Aſſumpſit*, a Set-off, and a Tender as of laſt Term. Plaintiff's Counſel objected to the laſt Plea, That Defendant had taken out a Judge's Summons for Time to plead, which (though no Order was made thereon) ſhews that they have not been *touts Temps priſt*. But *per Cur':* The Motion was made in Time. A Tender is no dilatory Plea. The Rule made abſolute. *Agar* for Defendants; *Prime* for Plaintiff.

Bownas *againſt* Wilcock, Widow.

TRESPASS brought by Tenant againſt Landlady (who had diſtrained for Rent) for breaking and entering Plaintiff's Cloſe and Shop, and taking and carrying away his Farrier's Tools and Goods. The Declaration contained five Counts (fol. 73.) Motion by Defendant to reduce the five Counts into one. Rule to ſhew Cauſe. On Plaintiff's Part an Affidavit was produced, proving ſix different diſtinct Treſpaſſes; but the Court did not conſider theſe as ſimilar to Counts in *Aſſumpſit*. The

Treſpaſſes on different Days may be laid in one Count for breaking and entering the Houſe and Shop, on ſuch a Day, *&c.* with a *Continuando*; and another Count may be added for taking away the Goods, *&c.* without laying the Taking to be out of the Houſe and Shop. The Declaration ordered to be reduced into two Counts. *Poole* for Defendant; *Prime* and *Willes* for Plaintiff.

Jackſon *againſt* Warwick and others, in Replevin. Trinity 25 & 26 Geo. 2.

RULE made abſolute, giving Plaintiff Leave to withdraw his Plea in Bar to Defendant's Avowry, and to plead doubly, *viz.* the ſame Plea, with another Plea added, on Payment of Coſts. In the Courſe of this Motion it was ſaid, that the frequent Applications made to the Court to plead *Non Aſſumpſit*, and *Non Aſſumpſit infra ſex Annos*, were unneceſſary; becauſe the latter Plea ſingly would anſwer all Purpoſes, without the former; but this is a Miſtake. Under the former Plea, Coverture, a Releaſe, a Set-off, may be given in Evidence, which under the latter cannot be done. *Poole* for Plaintiff; *Willes* for Defendants.

Pay *againſt* Dearſley. Eaſter 26 Geo. 2.

THE Declaration (fol. 17.) in a Country Cauſe, was delivered 8th *February* laſt, between eight and nine in the Evening, to Defendant's Agent, who had not Time to ſend a Copy by that Poſt to his Client. 16th *February* Defendant pleaded a Tender of Money, which Plaintiff's Agent inſiſting to be irregular, as not pleaded in Time, Summons was taken out; whereupon Lord Chief Juſtice ordered Proceedings to be ſtayed till ſecond Day of this Term; when *Poole* for Defendant moved to plead a Tender, and a Rule was made to ſhew Cauſe. Now *Willes* for Plaintiff came to ſhew Cauſe, and inſiſted, That where a Declaration is delivered four Days before the End of a Term, on Proceſs returnable the firſt or ſecond Return of that Term, (in which Caſe Defendant is not intitled to an Imparlance) if Defendant would plead a Tender, he muſt do it within four Days after Declaration delivered, the ſame Time he has to plead in Abatement. The

Court did not eſtabliſh this Doctrine; but held, that whatever the ſtrict Rules of Practice may be, yet they may and ought to be diſpenſed with on particular Circumſtances. The Delivery of this Declaration at the laſt Minute looks like a Trick, to deprive Defendant of the Benefit of his Plea, which is not conſidered as dilatory; it is iſſuable, and the Money pleaded to be tendered is brought into Court with it. Rule abſolute, giving Defendant Leave to plead a Tender.

Pitfield *againſt* Morey. Trinity 26 & 27 Geo. 2.

RULE abſolute to plead a Tender of Money to the firſt Count, and *Non Aſſumpſit* to the Reſidue, as of the laſt Term; the Declaration not being delivered till the Day before the Eſſoign Day of this Term, Defendant's Agent could not get Inſtructions from the Country in Time, though he might have had an Anſwer, and applied a Day or two ſooner. A Tender is a fair Plea. *Wynne* for Defendant; *Draper* for Plaintiff.

Browne *againſt* James, in Replevin.

RULE made, giving Defendant Leave to withdraw his former Avowries, *&c.* and plead the ſame again, with two other Pleas added, on Payment of Coſts, (after Iſſues joined twelve Months ago) Plaintiff to be at Liberty to plead in Bar *de novo*, and to proceed to Trial next Aſſizes. *Poole* for Defendant; *Wilſon* for Plaintiff.

Halton *againſt* Holme, one, &c.

RULE to ſhew Cauſe why Defendant ſhould not have Leave to withdraw his Plea, pay 50*l.* into Court, and plead the General Iſſue, made abſolute; Defendant doing ſo within a Week, and taking ſhort Notice of Trial for next Aſſizes. *Poole* for Defendant; *Willes* for Plaintiff.

Bell *againſt* Croſsthwaite, in Treſpaſs. Mich. 27 Geo. 2.

INterlocutory Judgment regularly ſigned for Want of a Plea, Rule to ſhew Cauſe why ſhould not be ſet aſide on Payment of Coſts, and pleading an iſſuable Plea. On ſhewing Cauſe, *Willes* for Plaintiff urged, that the Action was laid in *Cumberland*, where the Aſſizes are held but once a Year, and Plaintiff had been delayed of a Trial; and that if the Court did ſet aſide a regular Judgment, they would confine Defendant to plead the General Iſſue. But it appearing that the Diſpute was Matter of Title, and that the Plea, through Accident, was not ſettled in Time, the Rule was made abſolute. *Poole* for Defendant.

Mich. 28 Geo. 2.

MOTION in Action on the Caſe to plead *Non aſſumpſit* and Infancy denied, becauſe the later Plea is uſeleſs; Infancy may be given in Evidence on the general Iſſue: In Debt on Bond or other Deed *Non eſt factum* and Infancy have been allowed to be pleaded, becauſe though the Bond, *&c.* may be Defendant's Deed; yet if he was under Age at the Time of its Execution he is not bound by it.

Fox Executor *againſt* Meen, in Debt on Bond.

MOTION by *Draper* for Defendant for Leave to plead doubly *(viz.) Non eſt factum*, and *Solvit poſt diem*, denied as never yet granted.

Mathews *againſt* Statham Executor. Hilary 28 Geo. 2.

RULE abſolute for Leave to plead three Pleas *(viz.) Non aſſumpſit* by the Teſtator, a General *plene adminiſtravit*, and a Special *plene adminiſtravit*; it may be dangerous and inconvenient to rely on the third Plea without the Aid of the ſecond; No Affidavit to verify the *Plene adminiſtravit* has been required of late. *Poole* for Defendant; *Wynne* for Plaintiff.

Milner *againſt* Wilſon, in Treſpaſs Aſſault and Battery. Trin. 28 Geo. 2.

RULE made abſolute to plead Not guilty, and a Licence; a Licence to beat a Man is very extraordinary, but Leave to plead theſe Pleas has been granted in other Caſes. *Poole* for Defendant; *Willes* for Plaintiff.

Whitby *againſt* Chapman, in Replevin. Mich. 29 Geo. 2.

RULE to ſhew Cauſe why Defendant ſhould not reply ſeveral Matters to a Plea in Bar to an Avowry diſcharged. No Inſtance can be ſhewn of ſeveral Matters replied ſince *Statute* 4 *Q. Ann.* ſeveral Matters may with Leave of the Court be pleaded to a Declaration in a common Caſe; and in Treſpaſs to a new Aſſignment, that being in the Nature of a New Declaration; and alſo in Replevin in Bar to an Avowry or Cognizance, ſetting out the Right to ſeize or diſtrain, which is to be controverted; but though the Words of the Statute are to plead as many Matters, *&c.* and Replications, Rejoinders, *&c.* are properly Pleadings; yet the Courts of *Weſtminſter* have never carried their Leave further than as before-mentioned. *Draper* for Plaintiff; he quoted *Poltro* againſt *Self* in *B. R. Hil.* 17 *Geo.* 2. where the Court refuſed Leave to reply doubly to a Plea of Tender. *Prime* for Defendant.

Stibbard *againſt* Glover in Replevin. Eaſter 29 Geo. 2.

RULE abſolute to plead three ſeveral Matters, *viz.* Firſt, *Non cepit*; Secondly, That the Cattle were the Property of another Perſon, not of the Plaintiff, and Thirdly *Liberum Tenementum*. *Prime* for Defendant; *Martyn* for Plaintiff.

Newman *againſt* Leech, Executor.

RULE made abſolute, giving Defendant Leave to plead doubly, *viz. Ne unques* Executor, and *Plene adminiſtravit*, (no Cauſe ſhewn by Plaintiff to the contrary.) *Poole* for Defendant.

Simpſon *againſt* Neale, Eſq; Trin. 30 & 31 Geo. 2.

TO a Plea in Bar of a former Judgment recovered for the ſame Debt now ſued, for which Plea was ſigned by a Serjeant at Law, Plaintiff delivered a Replication of *Nul tiel Record* not ſigned by a Serjeant. Whenever the Plea is ſigned by a Serjeant, the Replication muſt be likewiſe ſigned. Rule abſolute to ſet aſide the Replication. In this Court all Pleas muſt be ſigned by a Serjeant, except *Non Aſſumpſit, Non Cul. Comperuit ad Diem, Son aſſault demeſne, Plene adminiſtravit, Riens per Diſcent, Nul tiel Record, Per Minas, Solvit ad Diem, Ne unques* Executor, *Ne unques* Adminiſtrator, *Infra Etatem, Non eſt Factum, Nil debet*, Payment of Rent in Covenant, *&c. Wilſon* for Defendant; *Prime* for Plaintiff.

Lookup, Eſq; *againſt* Frederick, Bart. Hil. 31 Geo. 2.

RULE to ſhew Cauſe why Defendant ſhould not have Leave to Plead ſeveral Matters diſcharged, the Action being brought on a *Penal Statute* 9 *Q. Ann.* (for Money won at Play) is not within the *Statute* 4 *Q. Ann.* for the Amendment of the Law. *Wilſon* for Plaintiff; *Davy* for Defendant.

Thomas *againſt* Eamonſon in Replevin. Eaſter 31 Geo. 2.

RULE abſolute to plead *Non cepit*, and to avow the taking. Like not Guilty, and a Juſtification in Treſpaſs. *Davy* for Defendant; *Hayward* for Plaintiff.

Spooner *againſt* Hall. Trinity 31 Geo. 2.

SPECIAL Action on the Caſe founded on Agreement to do a Thing or pay three Guineas. Rule abſolute to plead *Non aſſumpſit*, a Tender and a Set-off. If any of the Pleas improper, Plaintiff may demur. *Prime* for Defendant; *Hewitt* for Plaintiff.

Gerring *againſt* Manning in Treſpaſs. Trinity 32 & 33 Geo. 2.

RULE abſolute giving Defendant Leave to plead not Guilty, and a Tender of Amends. This very different from *Non aſſumpſit*, (in Caſe on Promiſe) and a Tender of Money. *Vide antea*, *Alderton* againſt *Dodding*, *Mich.* 22 *Geo.* 2. is miſprinted. The Action there was Caſe on Promiſe, the Pleas denied to be pleaded were *Non aſſumpſit*, and a Tender of Money. *Hewitt* for Defendant; *Nares* for Plaintiff.

Priſoners.

Wagſtaffe *againſt* Darby. Mich. 6 Geo. 2.

A Motion was made to diſcharge a Priſoner in the *Fleet*, detained by a *Capias utlagat'*, (Plaintiff being dead.) Upon Affidavit of the Death of Plaintiff, and ſearching the proper Offices at *Doctors Commons*, and finding no Adminiſtration granted, or Will proved, a Rule was made to ſhew Cauſe, which was afterwards made abſolute.

Poulſter *againſt* Greenwood.

UPON a Point reſerved by Lord Chief Juſtice at *Niſi prius*, in an Action brought againſt the Sheriff of *Lancaſhire* for an Eſcape, it was held *per Cur'*, that an Aſſignment of Priſoners by an Under-Sheriff to the ſucceeding High-Sheriff (though not by Indenture) is a good Aſſignment.

Beech *againſt* Paxton, Widow, Eaſter 6 Geo. 2.

DEfendant, who had petitioned to be diſcharged purſuant to the Lords Act, was ordered to remain in the Cuſtody of the Warden of the *Fleet Priſon* upon Plaintiff's giving a Note to pay her 2*s.* 4*d. per* Week every *Monday*. Plaintiff once made Default of Payment on the Day, and Defendant applied to the Court to be diſcharged; but it appearing that the Money was tendered to Defendant the Day following, Defendant was remanded to Priſon.

Wheatley *againſt* Parker. Trinity 6 & 7 Geo. 2.

DEfendant, a *Quaker*, brought up to Court to be diſcharged upon the Lords Act; but refuſing to take the Oath by the Act required, was remanded to Priſon. *Note*; This altered ſince by Act of Parliament.

Baker *againſt* Holmer.

DEfendant petitioned upon the Lords Act, and it appeared that he was charged in Execution for 103*l.* 10*s.* Debt, beſides Coſts. It was alledged by the Petition that 42*l.* 5*s.* Part of the Debt, was paid. Court denied to make any Order.

Greenſal

Greenſal *againſt* Cooper.

A Priſoner, charged in Execution in the *Marſhal's Court*, petitioned that Court to be diſcharged upon the Lords Act, and was detained there upon Plaintiff's undertaking to pay his 2*s.* 4*d.* *per* Week. Defendant afterwards removed himſelf by *Habeas Corpus* to the *Fleet*, and moved to be diſcharged for Nonpayment of the 2*s.* 4*d.* *per* Week. Court made a Rule to ſhew Cauſe; but afterwards, upon hearing Counſel on both Sides, the Rule was diſcharged, Court being of Opinion that Defendant had loſt the Benefit of the Act by removing himſelf, and could only petition and be diſcharged by that Court out of which the Execution iſſued. *Darnall* for Defendant; *Baynes* for Plaintiff.

Palmby *againſt* Maſters.

DEfendant, a Bankrupt, was rendered in Diſcharge of his Bail after Judgment, and now moved to be diſcharged purſuant to the Bankrupt Act. Plaintiff objected that the Words of the Act extend only to Perſons charged in Execution, or by Virtue of Judgments. The Judgment appeared to be for a Debt due before the Bankruptcy, and was entered in *Hilary* Term laſt; the Render was in the Beginning of *April*, and the Bankrupt's Certificate was confirmed the 18th of *April*. *Chapple* for Defendant urged, that the Words of the Act extend to Bankrupts detained in Cuſtody for Debts due before they became Bankrupts, which Debts are diſcharged by the Act, let them be detained how they will, in Execution or otherwiſe, they are to be diſcharged. Court, after taking Time to conſider, ordered Defendant to be diſcharged.

Peachey *againſt* Bowes, Spinſter.

DEfendant being a Priſoner in the *Fleet* at Plaintiff's Suit, brought a Writ of Error, and thereupon Judgment was reverſed, and a *Superſedeas* iſſued to diſcharge her out of Cuſtody; but before ſhe could get the *Superſedeas* allowed, Plaintiff charged her with a new Declaration; whereupon ſhe moved to be diſcharged; And the Court, upon hearing Counſel on both Sides, were of Opinion, that Defendant being detained a Priſoner at Plaintiff's Suit only, and not at any other Perſon's, could not be regularly charged with the ſecond Declaration after the Reverſal of the firſt Judgment, whereon Defendant had been wrongfully detained, and therefore ordered Defendant to be diſcharged, notwithſtanding the ſecond Declaration. *Comyns* for Defendant; *Eyre* for Plaintiff.

Shaw, Bart. *againſt* Gimbert. Mich. 7 Geo. 2.

Defendant, an inſolvent Priſoner, moved to be diſcharged for Plaintiff's not paying the Weekly Allowance of 2 *s.* 4 *d.* according to the Act of Parliament. Plaintiff ought to have paid the Money on *Tueſday*, and neglected it; but on *Friday* following his Agent tendered the Money to Defendant, who refuſed to accept it. *Per Cur':* No wilful Default appears in the Plaintiff; let Defendant be remanded.

Robins *againſt* Wigley.

The Defendant being a Priſoner in the *Fleet* was brought to the Bar by *Habeas Corpus*, in order to be charged in Execution at Plaintiff's Suit. *Baynes* for Defendant objected, that Plaintiff, not having charged Defendant in Execution within two Terms after Judgment obtained, was now too late, Defendant being intitled to a *Superſedeas*; and ſo the Court held, and the Priſoner was remanded. *(Aliter poſtea.)* Plaintiff may proceed at his Peril.

Baker *againſt* Holmer.

Defendant, who was charged in Execution at the Plaintiff's Suit for 103 *l.* 10 *s.* Debt, beſides Coſts, made an Affidavit that 42 *l.* 5 *s.* Part of the Debt, was paid; and thereupon *Hawkins* moved that Plaintiff might endorſe upon the *Habeas Corpus* by Virtue whereof the Defendant was charged in Execution, the Sum remaining due, in order that upon Plaintiff's own ſhewing the Sum might appear to be under 100*l.* whereby Defendant would be enabled to take the Benefit of the Lords Act. The Court made a Rule to ſhew Cauſe, which was afterwards made abſolute upon hearing *Belfield* for Plaintiff.

Note; Plaintiff afterwards indorſed 103*l.* 10*s.* upon the *Habeas Corpus* as his Debt; and the Court, upon a ſubſequent Application, refuſed to enter farther into the Conſideration of what was really due.

Toms *againſt* Hammond.

DEfendant moved to be diſcharged upon the Act of Parliament as a Domeſtick or menial Servant (which were the Words of his Affidavit) of Baron *Hopman*, Envoy from the Duke of *Mecklenbourgh*, and obtained a Rule *Niſi*. Plaintiff ſhewed for Cauſe, that Defendant had an Annuity of 200*l.* a Year, and that he was a Juſtice of Peace for *Middleſex*; ſo that it was not likely he could act as the Envoy's Domeſtick Servant, and inſiſted that the Words of the Envoy's Certificate produced by Defendant were *Menial Servant* only, which is not within the Act, the Words of the Act being *Domeſtick Servant*. *Per Cur'*: The Word *Menial* is not explained by our Law, *Domeſtick Servant* are the Words of the Act, and it doth not appear that Defendant was ſuch. A menial Servant may be employed out of the Houſe or Houſhold Affairs, a Domeſtick in or about the Houſe only. A Perſon hired as a Clerk is no Domeſtick Servant. Defendant did not appear to have received any Wages. Let the Lule be diſcharged.

Luker *againſt* Wallis, Widow. Eaſter 7 Geo. 2.

THE Defendant being an inſolvent Debtor was brought into Court a ſecond Time, and Plaintiff being dead, his Executor appeared, and prayed further Time to inquire into the Truth of Defendant's Diſcovery of her Effects; but the Court refuſed to enlarge the Time, which is limited by Act of Parliament, and diſcharged the Priſoner.

War-

Warrington *againſt* Elliott.

PLaintiff's Attorney appeared and offered to ſign a Note for *2s. 4d. per* Week, to be allowed Defendant in order to continue him in Priſon in Execution at the Plaintiff's Suit; but the Court diſcharged the Defendant for want of Plaintiff's ſigning ſuch Note, the Signing of the Attorney not being ſufficient.

Caſtle, and Wife, *againſt* Whitaker. Trinity 7 & 8 Geo. 2.

GIRDLER moved for the Defendant to ſhew Cauſe why it ſhould not be referred to the Prothonotary, to examine what was due for the Plaintiff's Debt, in order that Defendant might have the Benefit of the Lords Act, upon an Affidavit that 21 *l.* only remained due, though Defendant was charged in Execution for upwards of 100 *l.* Court refuſed that Rule, but made a Rule to ſhew Cauſe why, upon Payment of the 21 *l.* and Coſts to be taxed, Defendant ſhould not be diſcharged.

Swain *againſt* Girdler, Serjeant at Law.

DEfendant was ſued by Bill; to which he demurred, inſiſting that he ought to be ſued by Original, and upon arguing the Demurrer, a Caſe was quoted, *Baker* againſt *Swindale* in this Court, *Mich.* 10 *G. Roll.* 360. that was an Action brought againſt a Prothonotary's Clerk by Original. He pleaded that he ought to be ſued by Bill; to which Plaintiff demurred, and the Court gave Judgment that the Defendant ſhould anſwer over. *Per Cur':* This Caſe is in Point; Serjeants, Prothonotaries Clerks, and all others not obliged to Attendance in Court, are upon the ſame Foot. Judgment *quod Billa caſſetur.* *Eyre* for Plaintiff; *Hawkins* for Defendant.

Cooper, and nine others, *againſt* Levi. Mich. 8 Geo. 2.

DEFENDANT was committed to the *Fleet* by the Commiſſioners of Bankrupt for not anſwering Interrogatories in the long Vacation, when no Judge was in Town, and was then charged with Declarations at the Suit of ſeveral Plaintiffs, without Leave obtained from any of the Judges of the Court. Defendant applied to ſet aſide the Proceedings on the Day before the Writs of Inquiry were to be executed, and not before, and obtained a Rule to ſhew Cauſe, which was afterwards diſcharged on hearing Counſel on both Sides. The Court did not determine upon the Regularity of the Charge; but held that Defendant came too late to move after Judgment. *Eyre*, *Baynes* and *Urlin* for Plaintiffs; *Chapple* and *Skinner* for Defendant.

Jenner *againſt* Swan. Hilary 8 Geo. 2.

PER Cur': All Objections, as to the Inſufficiency of a Priſoner's Schedule of his Effects in Point of Form, are to be made upon the firſt Attendance: The ſecond Time the Priſoner is brought up, the Plaintiff muſt be prepared to falſify the Account given by Defendant of his Effects, if he can; he will then be too late to object to the Schedule in Point of Form.

Sir William Strickland *againſt* Hodgſon.

CHAPPLE moved to ſtay Proceedings upon a Declaration delivered againſt Defendant, a Priſoner in the County Gaol for *Northumberland*, the Declaration not having been entered in the Prothonotary's Office before it was delivered. The Motion was oppoſed by Serjeant *Eyre*; and upon looking into the Rule of Court made ſoon after the Statute of 4 & 5 *W.* 3. for eſtabliſhing the Practice touching the Delivery of Declarations to Priſoners in Country Gaols, the Court were of Opinion that it is ſufficient to enter the Declaration any Time before giving a Rule to plead, and therefore no Rule was made.

Tidmas *againſt* Procter. Trin. 8 & 9 Geo. 2.

DEfendant, an Inſolvent Debtor, petitioned to be diſcharged for Non-payment of the Weekly Allowance of 2*s.* 4*d.* but it appearing that Plaintiff was dead before any Default made in Payment, the Court made no Rule. This is a Caſe unprovided for by Act of Parliament.

Tidmas *againſt* Procter. Mich. 9 Geo. 2.

COURT made a Rule for Plaintiff's Executor to ſhew Cauſe why Defendant, an Inſolvent Debtor, ſhould not be diſcharged for Non-payment of the Weekly Allowance of 2*s.* 4*d.* and upon an Affidavit of Service, no Cauſe being ſhewn, Defendant was ordered to be diſcharged, the Words of the Act of Parliament being general.

Featherſtonehaugh, and Wife Adminiſtratrix of Brown, *againſt* Atkinſon.

DEfendant had been a Priſoner in *Wood-ſtreet* Compter in 1732. upon meſn Proceſs at the Suit of *Brown*, Plaintiff's Inteſtate, and being at that Time a Serjeant at Mace, the Keeper of the Compter ſuffered him to have the Liberty of the Gate (as it is called) that is, to have his Liberty upon Promiſe to return into Cuſtody whenever called upon by the Keeper; the ſaid Action having never been diſcharged upon the Books of the Compter, and *Brown* in his Life-time having obtainted Judgment, Plaintiffs revived the ſame by *Scire Facias*, and having obtained an Award of Execution, charged Defendant (ſtill a Priſoner on the Books) with a *Capias ad ſatisfaciendum*, as a Priſoner in Cuſtody of the Sheriffs of *London*; whereupon the Keeper of the Compter endeavoured to perſuade Defendant to return into Cuſtody; which he refuſing, the Keeper on *Sunday November* 9. retook Defendant at *George*'s Coffee-houſe, *Temple-Bar*, without any Warrant, and Defendant moved againſt the Keeper to be diſcharged, inſiſting that as the Eſcape was voluntary, the Keeper could not retake him; and alſo inſiſting, that the Debt was paid to *Brown* in his

Life-time. The Keeper, on ſhewing Cauſe, could not controvert the firſt Thing inſiſted on, *viz.* that the Eſcape was voluntary, and as to Payment of the Debt, that was out of his Knowledge; *Brown*'s Action never was diſcharged from the Books, and Plaintiffs were not Parties to this Motion. But there having been a former Motion this Term by Defendant to be diſcharged, the Debt being paid; Plaintiffs had anſwered that Fact, and ſhewn ſufficient Cauſe to keep him in Cuſtody. The Eſcape on all Hands being admitted to be voluntary, Mr. Juſtice *Denton* and Mr. Juſtice *Forteſcue* were of Opinion, that the Keeper could not retake Defendant, and that he ought to diſcharge him. Had the Eſcape been real, the Keeper might have retaken Defendant upon a *Sunday*, and is not reſtrained by the Statute 29 *Car*. 2. Mr. Juſtice *Reeve* was of the ſame Opinion in Point of Law, but thought it too much for the Court to relieve Defendant, who appeared to have acted (at leaſt very diſhonourably with regard to the Keeper) in this ſummary Way upon Motion, and that Defendant ſhould be put to his Action or an *Audita Querela*. Defendant was ordered to be diſcharged. *Skinner*, *Urlin* and *Wright* for the Keeper; *Glyde*, *Chapple* and *Eyre* for Defendant.

Roberts *againſt* Hammond. Hil. 9 Geo. 2.

DEFENDANT, an Inſolvent Debtor, was diſcharged on the Lords Act. Plaintiff afterwards brought an Action of Debt on the Judgment, and Defendant being arreſted thereupon, moved to be diſcharged, which was ordered on hearing Council on both Sides. The Perſon after being once diſcharged from an Execution by Act of Parliament, is to be free, and cannot be afterwards retaken by Execution or Action on the Judgment. *Chapple* for Defendant; *Wright* for Plaintiff.

Cain *againſt* Molineux.

DEFENDANT moved to be diſcharged out of Execution being Steward of the Houſhold to Baron *Bourk*, a Foreign Envoy, and obtained a Rule to ſhew Cauſe, which was afterwards diſcharged on hearing Council on both Sides, it appearing that Defendant was a Trader, that he reſided at his own Houſe in the *Old Palace-Yard Weſtminſter*, and that the Envoy was at *Hanover* at the Time of the Arreſt. *Eyre* for plaintiff; *Chapple* and *Skinner* for Defendant.

Deſeriſay *againſt* O'Brien.

DEFENDANT being arreſted at Plaintiff's Suit, moved upon the Act of Parliament of Queen *Anne* to be diſcharged out of Cuſtody upon Affidavits that he was a Courier employed in the Service of Sir *Thomas Geraldino*, Envoy from the King of *Spain*, and (during Receſs from Journies wherein he was frequently employed by the Envoy) did eat at his Houſe among his other Servants, and was paid Wages by him. It was inſiſted for Plaintiff, that Sir *Thomas Geraldino* was not a publick Miniſter within the Act of Parliament, but only an Agent for the Court of *Spain*, to treat with the *South Sea* Company: That admitting him to be a publick Miniſter, a Courier or Meſſenger, who is paid for each Journey according to his Deſert, and not a certain Sum for Wages by the Year, is not a Domeſtick Servant. It fully appeared by Affidavits produced on Behalf of Plaintiff, that Defendant was a Trader, and conſequently not entitled to the Benefit of the Act of Parliament. The Rule to ſhew Cauſe why Defendant ſhould not be diſcharged out of Cuſtody was ſet aſide. *Ward* againſt *Purſell*, *Mich.* 2 *Geo.* 2. in *B. R.* was quoted. *Chapple*, *Eyre* and *Skinner* for Defendant; *Comyns* and *Wright* for Plaintiff.

Kirke *againſt* Burrowes. Trinity 10 Geo. 2.

DEFENDANT obtained a *Superſedeas* for Want of Proſecution; but before he was diſcharged by Virtue thereof, Plaintiff cauſed him to be charged in Execution. Defendant was ordered to be diſcharged with Coſts, conſenting to bring no Action. *Eyre* for Defendant; *Skinner* for Plaintiff.

Hannot *againſt* Farettes.

DEFENDANT being brought to the Bar by the Warden of the *Fleet* by Virtue of a *Habeas Corpus ad ſatisfaciendum*, in order to be charged in Execution at Plaintiff's Suit, produced the Allowance of a Writ of Error; and objected, that as ſuch Writ was ſealed and allowed, he ought not to be charged; but the Court ſaid they would not intermeddle, Plaintiff might proceed at his Peril; and thereupon Defendant was charged in Execution.

Hannot *againſt* Farettes. Mich. 10 Geo. 2.

PLAINTIFF cauſed Defendant, a Priſoner in the *Fleet*, to be charged in Execution after Writ of Error ſealed and allowed, but before Notice thereof to Plaintiff's Attorney. The Court ſet aſide the Commitment in Execution, but refuſed to grant an Attachment againſt Plaintiff's Attorney, becauſe, though the Writ of Error be a *Superſedeas* from the Allowance, no Contempt is incurred till after Notice of it. *Chapple* for Defendant; *Eyre* for Plaintiff.

Wright, Adminiſtrator, *againſt* Kerſwill.

DEFENDANT was diſcharged out of Cuſtody by *Superſedeas* on entering a common Appearance, for Want of Plaintiff's proceeding to Judgment within three Terms after Declaration delivered. Plaintiff afterwards obtained Judgment, and Defendant being taken in Execution, moved to be diſcharged, inſiſting that after a *Superſedeas* his Perſon was free, and could not be again detained by Proceſs in the ſame Action, and it ſeems to have been the Senſe of the Court, when a Rule was made *Hil.* 8 *G.* 2. that if after a *Superſedeas* an Action of Debt be brought on Judgment, Defendant ſhall be diſcharged without Bail. It was urged for Plaintiff, that Defendant having never been a Priſoner after Judgment might at any Time during his Confinement put in Bail to the Action, and being diſcharged on meſne Proceſs only before Judgment, he is after Judgment liable to be taken in

Execution. The Court took Time to conſider of this Matter, and after conſulting the Judges of the other Courts, determined that in this Caſe Defendant having been diſcharged by *Superſedeas* before Judgment, was not finally diſcharged; but after Judgment is ſubject to be taken in Execution; though where a Defendant is ſuperſeded after Judgment for want of being charged in Execution (within two Terms after Judgment obtained), his Perſon cannot be afterwards taken in Execution. *Eyre* for Defendant; *Chapple* for Plaintiff.

Clarke *againſt* Venner.

THE ſame Caſe.

Nicholas Fling's Caſe. Hil. 10 Geo. 2.

DEFENDANT, being in Cuſtody of the Sheriffs of *Briſtol*, brought his *Habeas Corpus* to be removed to the *Fleet*, and tendered it to the Sheriffs with Seven Guineas (exceeding 1 *s*. *per* Mile) which the Sheriffs refuſed to accept, and inſiſted on 10 *l*. Defendant moved for an Attachment againſt the Sheriffs, and obtained a Rule to ſhew Cauſe, which was afterwards made abſolute. *Eyre* and *Corbett* for Defendant; *Draper* for the Sheriffs.

Mendes *againſt* Wolfe.

DEFENDANT, an inſolvent Priſoner, detained by two Executions, was by one Plaintiff allowed 2 *s*. 4 *d*. a Week on being continued in Cuſtody according to the Act of Parliament; and the other Plaintiff alſo inſiſting to detain Defendant, the Queſtion was what Allowance he ought to make; and held *per Cur'*, that the ſecond Plaintiff muſt alſo allow Defendant 2 *s*. 4 *d*. *per* Week.

Hannot *againſt* Farettes.

DEFENDANT being brought to the Bar by the Warden of the *Fleet* by Virtue of a *Habeas Corpus ad ſatisfaciendum*, in order to be charged in Execution at Plaintiff's Suit, produced the Allowance of a Writ of Error; and objected, that as ſuch Writ was ſealed and allowed, he ought not to be charged; but the Court ſaid they would not intermeddle, Plaintiff might proceed at his Peril; and thereupon Defendant was charged in Execution.

Hannot *againſt* Farettes. Mich. 10 Geo. 2.

PLAINTIFF cauſed Defendant, a Priſoner in the *Fleet*, to be charged in Execution after Writ of Error ſealed and allowed, but before Notice thereof to Plaintiff's Attorney. The Court ſet aſide the Commitment in Execution, but refuſed to grant an Attachment againſt Plaintiff's Attorney, becauſe, though the Writ of Error be a *Superſedeas* from the Allowance, no Contempt is incurred till after Notice of it. *Chapple* for Defendant; *Eyre* for Plaintiff.

Wright, Adminiſtrator, *againſt* Kerſwill.

DEFENDANT was diſcharged out of Cuſtody by *Superſedeas* on entering a common Appearance, for Want of Plaintiff's proceeding to Judgment within three Terms after Declaration delivered. Plaintiff afterwards obtained Judgment, and Defendant being taken in Execution, moved to be diſcharged, inſiſting that after a *Superſedeas* his Perſon was free, and could not be again detained by Proceſs in the ſame Action, and it ſeems to have been the Senſe of the Court, when a Rule was made *Hil.* 8 *G.* 2. that if after a *Superſedeas* an Action of Debt be brought on Judgment, Defendant ſhall be diſcharged without Bail. It was urged for Plaintiff, that Defendant having never been a Priſoner after Judgment might at any Time during his Confinement put in Bail to the Action, and being diſcharged on meſne Proceſs only before Judgment, he is after Judgment liable to be taken in

Execution. The Court took Time to conſider of this Matter, and after conſulting the Judges of the other Courts, determined that in this Caſe Defendant having been diſcharged by *Superſedeas* before Judgment, was not finally diſcharged; but after Judgment is ſubject to be taken in Execution; though where a Defendant is ſuperſeded after Judgment for want of being charged in Execution (within two Terms after Judgment obtained), his Perſon cannot be afterwards taken in Execution. *Eyre* for Defendant; *Chapple* for Plaintiff.

Clarke *againſt* Venner.

THE ſame Caſe.

Nicholas Fling's Caſe. Hil. 10 Geo. 2.

DEFENDANT, being in Cuſtody of the Sheriffs of *Briſtol*, brought his *Habeas Corpus* to be removed to the *Fleet*, and tendered it to the Sheriffs with Seven Guineas (exceeding 1 *s. per* Mile) which the Sheriffs refuſed to accept, and inſiſted on 10 *l.* Defendant moved for an Attachment againſt the Sheriffs, and obtained a Rule to ſhew Cauſe, which was afterwards made abſolute. *Eyre* and *Corbett* for Defendant; *Draper* for the Sheriffs.

Mendes *againſt* Wolfe.

DEFENDANT, an inſolvent Priſoner, detained by two Executions, was by one Plaintiff allowed 2 *s.* 4 *d.* a Week on being continued in Cuſtody according to the Act of Parliament; and the other Plaintiff alſo inſiſting to detain Defendant, the Queſtion was what Allowance he ought to make; and held *per Cur'*, that the ſecond Plaintiff muſt alſo allow Defendant 2 *s.* 4 *d. per* Week.

Sibley *againſt* Sibley.

DEFENDANT taken in Execution, *September* 28, 1736. by *Ca. Sa.* returnable *tres Mich.* petitioned to be diſcharged on the Acts for Relief of Debtors; but *per Cur'* he comes too late; he ought to apply before the End of the firſt Term after the Arreſt, becauſe the Sheriff is liable to anſwer for an Eſcape from that Time, and not from the Return of the Writ.

Harriſon's Caſe. Eaſter 10 Geo. 2.

GEORGE Harriſon an Attorney, being in *Serjeants Inn* waiting to attend Mr. Juſtice *Forteſcue* on a Summons, was prevailed on by an Agent for one of his Creditors, under Pretence of Buſineſs, to go with him to a Coffee-houſe in *Chancery-Lane*, near *Serjeants Inn*, where after the Hour appointed for the Attendance at the Judge's Chamber was expired, *Harriſon* was arreſted. It appeared that *Harriſon* had left his Clerk at the Judge's Chamber, with Directions to call him when the Judge was there, and at Leiſure. The Court ordered *Harriſon* to be diſcharged. *Chapple* for *Harriſon*; *Eyre* for the Creditor.

Hand *againſt* Kelly. Hilary 11 Geo. 2.

DEFENDANT being detained (*inter alia*) by a *Capias utlagatum* founded on an Outlawry upon meſne Proceſs proſecuted by Plaintiff, was brought to the Seſſions of the Peace by Virtue of the compulſive Clauſe in inſolvent Debtors Act, 10 *Geo.* 2. and diſcharged, delivering a Schedule of his Effects. He was afterwards again arreſted by a *Capias utlagatum* renewed, and now moved to be diſcharged, giving a Warrant to appear *ſecundum Statut'*. Upon ſhewing Cauſe, the Court was of Opinion, that as Defendant in this Caſe cannot have any Advantage by pleading, the Motion is proper. No Appeal lies from the Seſſions; the Determination there is final. Defendant is diſcharged from all Debts except Debts to the Crown. The Rule was made abſolute to diſcharge Defendant without Coſts. *Eyre* and *Wright* for Defendant; *Urlin* for Plaintiff.

Davis *againſt* Hall.

DEFENDANT moved for a *Superſedeas* for want of Plaintiff's proceeding to Judgment within three Terms after Declaration delivered. Declaration was of *Eaſter* Term, and the final Judgment ſigned in *Michaelmas* Vacation laſt. Plaintiff urged, that the Judgment being a Judgment of *Michaelmas* Term, though not ſigned till the Vacation, is ſufficient to prevent *Superſedeas*; but *per Cur'*, the three Terms are always taken to be incluſive of that Term whereof the Declaration is, and unleſs Plaintiff proceeds to ſign final Judgment within the third Term he is too late. Rule abſolute for *Superſedeas*. *Draper* for Plaintiff; *Huſſey* for Defendant.

Clayton *againſt* Stapp. Eaſter 11 Geo. 2.

DEFENDANT brought into Court by *Habeas Corpus ad ſatisfaciendum*; Serjeant *Agar* objected againſt his being charged in Execution, Mr. Juſtice *Forteſcue* having made an Order for a *Superſedeas May* 1. which was lodged with the Warden, and allowed, and Appearance entered; Defendant was ſuperſedable laſt Term, and ought to have the compleat Benefit; but Defendant not having ſerved the Order, nor allowed the *Superſedeas* till after *Habeas Corpus* was lodged with the Warden; *Cur'*: He muſt be charged, and he may apply afterwards as he ſhall be adviſed. Plaintiff may proceed at his Peril.

Cock *againſt* Kerridge. Trinity 11 & 12 Geo. 2.

DEFENDANT having obtained a Rule to plead doubly (*Non Aſſumpſit* and *Non aſſumpſit infra ſex annos*) Plaintiff moved to diſcharge it, inſiſting that Defendant, who was a Priſoner in the *Fleet* at the Time of his being charged with the Declaration before this Rule obtained, was diſcharged at the Seſſions of the Peace by the compulſory Clauſe in the Inſolvent Debtors Act 10 *G.* 2. and being at large could not regularly apply for the Rule to plead doubly, without firſt entering a common Appearance; which was not done. The Queſtion was never determined, but by Conſent Plaintiff had Leave to diſcontinue without Coſts. *Skinner* and *Urlin* for Plaintiff; *Wright* for Defendant.

Baldwin *againſt* O'Carroll.

DEFENDANT rendered himſelf into the Cuſtody of the Warden of the *Fleet* Priſon as a Fugitive for Debt, to take the Benefit of the late Act of Parliament, 10 *Geo.* 2. Plaintiff tendered a Declaration to the Warden, which he refuſed to accept, and thereupon Plaintiff moved for Leave to proceed, and had a Rule to ſhew Cauſe; but the Court ſeeming to be of Opinion that Defendant being in the Warden's Cuſtody for a particular Purpoſe only, was not liable to be charged with Declaration. Plaintiff conſented to waive his Proceedings, and the Rule was diſcharged. *Parker* for Plaintiff; *Urlin* for Defendant; *Eyre* for Warden.

Aſheley *againſt* Sutton. Hilary 12 Geo. 2.

RULE to ſhew Cauſe why a *Superſedeas* ſhould not Iſſue to diſcharge Defendant out of Cuſtody for want of being charged in Execution within two Terms. Plaintiff's Attorney, who lived in *London*, had ſent down a *Ca. Sa.* directed to the Sheriff of *Exeter* inſtead of *Devon*, which being ſent back, he rectified the Miſtake, got it reſealed, and ſent it again in Time (as he thought) to an Attorney at *Exeter*, with Directions to charge Defendant in Execution; but being miſtaken as to the Time of the Poſt's coming into *Exeter*, it came too late, and Defendant was not charged within the Term. It was arged for Defendant, that though the general Rule of Court directs a *Superſedeas* to iſſue unleſs Cauſe generally, and not confine Plaintiff to any particular Matter, yet nothing has ever been admitted as good Cauſe againſt a *Superſedeas*, but a Treaty for an Accommodation, where Proceedings have ſtaid at Defendant's Requeſt; and if Defendant be not charged within the limited Time, through the Ignorance of Plaintiff's Attorney, Plaintiff and not Defendant muſt ſuffer. Enlarging the Matters to be ſhewn for Cauſe againſt *Superſedeas* will be productive of Motions, and render the Practice uncertain. And of this Opinion was Mr. Juſtice *Forteſcue Aland*. But *per Capital' & al' Juſt'* any reaſonable Cauſe may be ſhewn. The Debt here is large (700 *l.*) and no Intention to oppreſs the Defendant appears; the want of Defendant's being charged in Time is by meer Miſtake, and through Accident; the *Ca. Sa.* when properly directed and reſealed is a new Writ. It is common to diſpenſe with the Words of an Act of Parliament (a ſtronger Caſe than Rule of Court); where Inſolvent Debtor applies to be diſcharged for Non-payment of 2 *s.* 4 *d. per* Week, the Court refuſes it, unleſs the Default of Payment be wilful. Equity relieves in the Execution of Powers upon the Head of Accident. This is a Cauſe within the Meaning of the general Rule. The Rule diſcharged. *Wright* for Plaintiff; *Eyre* for Defendant.

J. Munoz *againſt* Levi. Eaſter 12 Geo. 2.

DEFENDANT being charged in Execution at Plaintiff's Suit for 33 *l.* 10 *s.* and with no other Execution, petitioned to have the Benefit of the Lords Act, and being brought into Court, Plaintiff objected that Defendant was now charged with another Execution at the Suit of *A. Munoz* for 182 *l.* and being charged for more than 100 *l.* could not have the Benefit of the Act. The Court held, that they muſt conſider the Charge as it ſtood at the Time of the Petition, and therefore with Regard to the Plaintiff *J. Munoz*, Defendant was within the Act.

Morſe *againſt* Warren. Mich. 11 Geo. 2.

MOTION to ſtay Proceedings againſt Sheriff of *Hertfordſhire* on a Six Days Rule to bring in the Body of Defendant. The Sheriff had returned a *Cepi*, upon which this Rule was founded. The Defendant went to Gaol for want of Bail, and the Gaoler let him go at large, (of which Affidavit was made) but Defendant was a Priſoner at the Time of the Motion. The Sheriff gave Notice to ſtay Proceedings, or that Plaintiff might bring a *Habeas Corpus* at his own Charge. *Cur'* diſcharged the Rule. *Skinner* and *Eyre pro Vic'*; *Prime pro Quer'*.

Berryman *againſt* Gilbert and his Wife. Trinity 13 Geo. 2.

DEfendants were brought into Court the ſecond Time from the *Fleet* Priſon to be diſcharged from an Execution purſuant to the Statute 2 *Geo.* 2. *Wright* for Plaintiff inſiſted upon detaining Defendants in Cuſtody upon allowing them 2*s.* 4*d. per* Week, and produced a Note ſigned *John King*, Attorney for Plaintiff, promiſing to pay the ſame, and an Affidavit that Plaintiff was abroad in Foreign Parts, ſo that Plaintiff's Attorney could not procure a Note ſigned by his Client. The Court held this Note inſufficient within the Words of the Act, and for want of a Note ſigned by Plaintiff himſelf Defendants were diſcharged. Vide *Warrington* againſt *Elliot*, *Eaſter* 7 *Geo.* 2.

Barker *againſt* Palmer.

THE Court made a Rule abſolute to diſcharge Defendant upon the Lords Act for Non-payment of 2*s.* 4*d. per* Week, undertaken to be paid by Plaintiff at *Norfolk* Aſſizes (conformable to the ſettled Practice of the Court of *King's Bench*) a Record of the Proceedings at the Aſſizes being ſent to this Court ſigned by the Judge of Aſſizes.

Mabſon *againſt* Butler. Mich. 13 Geo. 2.

RULE to ſhew Cauſe why Defendant ſhould not be diſcharged out of the *Fleet* Priſon by *Superſedeas* for want of Plaintiff's proceeding to Judgment within three Terms after Render. It appeared that Defendant had eſcaped, and had been a long time out of Cuſtody. *Per Cur':* Let the Rule be diſcharged; in this Caſe the Time of Defendant's Recaption or coming again into Priſon ſhall be looked upon as the Time of the Render. *Eyre* for Plaintiff; *Price* for Defendant.

Huggins *againſt* Bambridge, a Priſoner in the Fleet.

DEclaration was delivered in *Hilary* Term laſt, with an Imparlance; and in *Eaſter* Term Defendant pleaded, and Plaintiff demurred to the Plea on the firſt Day of laſt Term. Defendant joined in Demurrer, and Plaintiff not proceeding farther to a *Conſilium*, or otherwiſe, all laſt Term, Defendant moved for a *Superſedeas* for want of Plaintiff's proceeding to Judgment within three Terms after Declaration, purſuant to the Rule *Eaſt*. 8 *Geo*. It was urged for Plaintiff, that the Plea being very long and ſpecial, Plaintiff could not, probably, have procured an Argument laſt Term; and if he had, it was unlikely the Court would have given Judgment on the firſt Argument. *Per Cur'*: Plaintiff has not proceeded as he might; he is not to judge whether the Court would have determined on the firſt Argument or not, it is an affected Delay to the Prejudice of Liberty: Plaintiff has ſhewn no good Cauſe why he did not proceed. The Rule is general, Plaintiff is to proceed to Judgment, (*i. e.* final Judgment) within three Terms, in all Caſes, incluſive of the Term of which the Declaration is delivered (the Intervention of the Argument of a Demurrer, or Trial of an Iſſue, makes no Difference) unleſs Plaintiff can ſhew it was out of his Power to proceed ſo faſt. Defendant ſhall take no Advantage of the Court's Delay, or in Counties where the Aſſizes are held but once a Year, it may be impoſſible to comply with the Letter of the Rule; but here the Delay is Plaintiff's. Let a *Superſedeas* iſſue, which extends only to diſcharge Defendant's Perſon from Confinement; the Action ſtill remains pending, and Defendant's Remedy, as to *Non-pros*, is ſeparate and diſtinct from the *Superſedeas*. *Skinner*, *Wynne* and *Agar* for Defendant; *Eyre* and *Bootle* for Plaintiff.

Poulter *againſt* Salmon. Hilary 13 Geo. 2.

DEfendant had been ſuperſeded after Judgment for want of being charged in Execution within two Terms. Plaintiff afterwards brought an Action of Debt on the Judgment; and having obtained a ſecond Judgment, cauſed Defendant to be taken in Execution *October* 9, 1739. Defendant, laſt Term, applied for a *Superſedeas*; and the Court took Time to conſider whether he was ſuperſedable or not. This Term, pending the Conſideration of the Court upon the *Superſedas*, Defendant petitioned, and had a Rule to be carried to next Aſſizes to be diſcharged by the Lords Act. The laſt Rule was ordered to be diſcharged. The Application for the *Superſedeas* and for this Rule are inconſiſtent. *Bootle* for Plaintiff; *Prime* for Defendant.

Dorrell *againſt* Biſhop.

UPON an Affidavit that Plaintiff abſconded, and could not be perſonally ſerved with a Rule to ſhew Cauſe why Defendant ſhould not be diſcharged purſuant to the Lords Act, Court made a Rule, that Service upon Plaintiff's Attorney ſhould be deemed good Service, and upon Affidavit of Service on Plaintiff's Attorney Defendant was diſcharged, no Perſon attending on Plaintiff's Behalf to oppoſe Defendant's Diſcharge.

Aſh *againſt* Day. Mich. 14 Geo. 2.

THE Declaration was of *Hilary* Term laſt, and Interlocutory Judgment ſigned the ſame Term. A Writ of Inquiry was executed, returnable *Tres Trin'* laſt; but being ſet aſide by the Court, becauſe the ſame was executed before a Perſon not properly deputed by the Sheriff, Defendant applied for a *Superſedeas* for Want of Plaintiff's proceeding to final Judgment within three Terms after the Declaration, and obtained a Rule to ſhew Cauſe, which was made abſolute. *Prime* for Plaintiff; *Willes* for Defendant.

Maddock *againſt* Fletcher.

DEfendant being arreſted by Bill of *Middleſex* at Plaintiff's Suit, and being charged alſo with a *Capias* at another Perſon's Suit in this Court, removed himſelf to the *Fleet* Priſon by *Habeas Corpus* 7th *May* 1740, and Plaintiff not having declared within two Terms, Defendant applied for a *Superſedeas*. Plaintiff objected, that the Motion here was improper, and Defendant ought to apply to the Court of *King's Bench*, from whence the firſt Proceſs iſſued. But *per Cur'*: Defendant's Application is regular, and agreeable to the conſtant Practice of this Court and the Court of *King's Bench*. The Removal to the *Fleet* being before a Declaration delivered, Plaintiff muſt declare in this Court, he cannot declare in the Court of *King's Bench*, (unleſs he removes Defendant by *Habeas Corpus ad reſpondend'*,) and for Want of a Declaration Defendant is to be diſcharged by this Court. Where a Defendant is removed after Declaration delivered, the Action muſt proceed in that Court wherein Plaintiff declares, and Defendant is to be ſuperſeded by that Court for Want of ſubſequent Proſecution, though detained in the Priſon of the other Court. *Prime* for Plaintiff; *Belfield* for Defendant.

Mich. 15 Geo. 2.

ON the Warden of the *Fleet*'s Petition, *inter alia* deſiring Leave to ſhut up the Priſon Gate ſooner than the Time appointed for that Purpoſe, it was prayed, that two Priſoners might be brought into Court on the Day of hearing the Matter, to oppoſe the Petition on Behalf of the Priſoners, (*viz.*) *John George*, detained by meſne Proceſs of this Court, and *James Browne*, detained in Execution out of the *Exchequer* at the Suit of the King. *Per Cur'*: *George* may be brought up by Rule; but *Browne* being held by an Execution from another Court cannot be brought up without an *Habeas Corpus*.

Coates's Caſe. Eaſter 15 Geo. 2.

MAY 6th *Robert Coates* was brought into Court by the Gaoler, by *Habeas Corpus* directed to the Sheriff of the Town of *Newcaſtle upon Tyne*; and by the Return *Coates* appeared to be charged with Proceſs of this Court, and with ſeveral Writs of *Capias* from the Court of *Exchequer*, at the Suit of the King for 800*l.* and upwards, as a Smuggler. *Per Cur'*: The *Habeas Corpus* is not returnable till the 12th inſtant. Defendant muſt be then brought into Court again, and in the mean Time give Notice to the Solicitor of the Cuſtoms. The King may chuſe his own Priſon; Defendant cannot be committed to the *Fleet* without the Conſent of the Crown. *May* 12th, it appearing by Affidavit that Mr. *Metcalfe*, Solicitor of the Cuſtoms, had, by the Direction of the Commiſſioners, ſigned a Conſent, and Serj. *Prime* conſenting *pro Rege*, Defendant was committed to the *Fleet*. *Bootle* for Defendant.

Aſhdowne againſt Fiſher.

RULE made abſolute to diſcharge Defendant, a Bankrupt, taken in Execution for a Debt accrued before the Bankruptcy. Defendant could not plead his Diſcharge in the firſt Inſtance, becauſe he did not obtain his Certificate till after he was obliged to plead. But it was inſiſted by Plaintiff's Counſel, that he might have pleaded *Poſt darrein Continuance*. Theſe Caſes muſt be conſidered equitably. *Blackwell* againſt *Coates*, 2 *Peere Williams* 70. No Concealment appears.

Judge *againſt* Torr. Trinity 16 Geo. 2.

DEfendant, after Judgment, was rendered to the *Fleet* Priſon in Diſcharge of his Bail in *Hilary* Vacation laſt, and this Term moved in the Treaſury for a *Superſedeas*, for Want of being charged in Execution within two Terms, purſuant to the General Rule 8 *Geo.* inſiſting, that the Render muſt be taken to be of *Hilary* Term; the Words of the Rule are, *within two Terms after ſuch Judgment obtained*; in Caſe of a Render after Judgment, the Words ſhould be, *after ſuch Render*. There muſt be a new Rule to ſettle the Practice in this and other Particulars, wherein the old Rule is defective. A Rule was granted to ſhew Cauſe why a *Superſedeas*, which upon Affidavit of Service was made abſolute, no Cauſe being ſhewn by Plaintiff to the contrary.

On Behalf of Greenwood.

DEfendant, a Priſoner in the *Fleet* charged on meſne Proceſs for 402 *l.* 15 *s.* had not given Security to the Warden for the Liberty of the Rules, petitioned the Court, and obtained a Rule for the Warden to ſhew Cauſe why a Day-Rule ſhould not be granted to the Petitioner and why a Tipſtaff ſhould not take him to *Hounſlow*, to meet and treat with his Creditors, and bring him back the ſame Day. *Skinner* for the Warden obſerved, that no Affidavit was filed to verify the Allegations in the Petition; and that no Inſtance could be ſhewn where the Court gave Leave to carry a Priſoner ſuch a Diſtance from the Priſon as deſired.

That one *Collett* had applied to be carried into *Kent*, for the ſame Purpoſe, in Lord Chief Juſtice *Eyre*'s Time, and was denied. The Rule was diſcharged.

Hill *againſt* Wadmore.

DEfendant, an Infant about ſixteen Years of Age, being charged in Execution at Plaintiff's Suit, for 60*l.* Damages and 30*l.* Coſts, total 90*l.* recovered againſt him by Plaintiff, in an Action for driving a Waggon upon Plaintiff, whereby his Arm was broken, petitioned the Court to be diſcharged upon the Lords Act; which was oppoſed by *Wynne* for Plaintiff; who urged, that this is not a Debt within that Act of Parliament, which was made for the Eaſe and Relief of Priſoners willing to ſatisfy their Creditors as far as they are able, and doth not extend to Actions for Torts, Negligences, *&c.* It appeared on the Trial, that though Defendant was called to, and might have ſtopped his Waggon, yet he obſtinately drove on; and Plaintiff was a poor Waterman, having a Wife and ſix Children, three of whom he maintained by his Labour, which he can hardly do ſince his Arm was broken by Plaintiff. *Per Cur':* The Damages and Coſts recovered are become a Debt, and Defendant muſt have the Benefit of the Act of Parliament; but We have Power to moderate the Allowance by Plaintiff. Let the Defendant be remanded, upon Plaintiff's allowing him 6*d.* a Week.

Tompkins, Attorney, *againſt* Woodley, Mich. 16 Geo. 2. 27th November 1742, in the Treaſury.

PLaintiff delivered a Declaration againſt Defendant, a Priſoner in the County Gaol for *Devon*, before the End of the ſecond Term, *viz.* on *Sunday* 4th *July*, three Days before the End of *Trinity* Term laſt. Defendant inſiſted, that this Delivery (being on a *Sunday*) was void, and applied for a *Superſedeas*; which, upon hearing the Agents on both Sides, the Judges refuſed to grant. Defendant hath not made Affidavit that he did not receive the Declaration, nor had it on the Day after the Delivery. The Act of Parliament touching Arreſts, *&c.* on *Sundays*, 29 *Car.* 2. *cap.* 7. doth not take in this Caſe.

Dalrymple and his Wife *againſt* Baynham. Eaſter 16 Geo. 2.

DEfendant being diſcharged by the Lord's Act, aſſigns his Effects to Plaintiffs. Afterwards he is charged in Execution upon a ſecond Judgment, obtained by the ſame Plaintiffs; and on his Diſcharge, the ſecond Time, the Court directed another Schedule to be made, containing the ſame Effects as the Firſt; taking Notice, that they had been already aſſigned; and then a ſecond Aſſignment to the ſame Plaintiffs, to make the Effects ſubject to the laſt Execution, in caſe they ſhould be more than ſufficient to ſatisfy the Firſt.

Sandys *againſt* Spivey. Trinity 16 & 17 Geo. 2.

DEfendant brought into Court by the Sheriff of *Middleſex* from *Newgate* (the County Gaol) by *Habeas Corpus ad Satiſfaciend'*; and Plaintiff's Counſel moved, that he might be charged at Plaintiff's Suit for 300*l.* and upwards, recovered by Judgment, (the Roll being in Court) and committed to the *Fleet* Priſon in Execution. The Counſel for the Crown oppoſed the Motion. It appeared that Defendant was charged with Proceſs from the Court of *Exchequer* by the Crown for 30,000*l.* for running Goods: That the Proſecution againſt him was commenced in *March* 1742, and the Informations were at Iſſue. That Plaintiff's Debt was by Bond dated in *September*, and a Warrant to enter Judgment thereon in *December* 1742, the Judgment was ſigned, and the *Habeas Corpus ad Satisfaciend'*, the firſt Proceſs at Plaintiff's Suit, iſſued 4th *June* 1743. *Per Cur'*: The King and his People are one. The Prerogative of the Crown is incorporated with the Law of the Land. Defendant is not intitled to this *Habeas Corpus*; it is brought by the Plaintiff, and the Conteſt is merely between the King and the Plaintiff. The King, by his Prerogative, hath a Right to ſue in what Court he pleaſes, and to impriſon his Debtor in the Gaol for the County or Liberty where he is arreſted. If this Court ſhould have inadvertently committed Defendant to the *Fleet*, by the Practice of the Court of *Exchequer*, the Attorney General might have had a new *Habeas Corpus*, and that Court would have ſent Defendant back to *Newgate*. The

Priority of Suit is in the Crown; though neither it, nor the Priority of the Debt, but the Choice of the Priſon, is the only preſent Queſtion. The Demand of the Crown is always to be preferred before that of any private Perſon. The Eſcape Warrant Act extends not to the Crown, becauſe before that Act the King had a Right to confine his Debtor where he pleaſed. The Court have no diſcretionary Power in this Caſe. Defendant was remanded. Plaintiff may charge him with a *Ca. ſa.* in Cuſtody of the Sheriff of *Middleſex*. *French*'s Caſe, *Salkeld* 353. *Stiles* 363. Counſel were heard for the Warden of the *Fleet*, who objected againſt receiving a Priſoner charged by the Crown with ſo large a Sum. *Skinner* and *Prime* for the King; *Wynne* and *Hayward* for the Plaintiff; *Birch* and *Willes* for the Warden of the *Fleet*.

Poole *againſt* Cook. Hilary 17 Geo. 2.

DEfendant, a Priſoner, applied to be diſcharged by *Superſedeas*, for Want of being charged in Execution within two Terms after Judgment. Plaintiff excuſed himſelf by the Delivery of a *Capias ad Satisfaciend'* to the Gaoler within due Time. But the Court held that to be inſufficient. The *Capias ad Satisfaciend'* ought to have been delivered to the Sheriff, and the Sheriff's Warrant to the Gaoler. Rule abſolute for *Superſedeas*. *Hayward* for Defendant; *Willes* for Plaintiff.

Hedley *againſt* Brown. Trinity 17 & 18 Geo. 2.

AFTLR a Writ of Inquiry executed, Defendant moved to ſtay the Proceedings; Plaintiff, ſince the Action brought, having been diſcharged by the Inſolvent Debtor's Act, and having aſſigned his Debts and Effects for the Benefit of his Creditors, the Court refuſed to make any Rule; the Action brought before the Diſcharge, muſt proceed. *Prime* for Defendant.

Mich. 18 Geo. 2.

WEAVER, charged in Execution by two ſeveral Creditors, and applying to be diſcharged upon the Lords Act, was oppoſed by both Creditors, and remanded; upon both Creditors giving him a joint Note to allow him 2 *s.* 4 *d.* *per* Week.

Dawſon and others *againſt* Draper. Mich. 18 Geo. 2.

Declaration delivered againſt Defendant, a Priſoner in the *Fleet*, in *Hilary* Term laſt, and Rule to plead then given; in *Eaſter* Term following Plaintiffs, without giving a new Rule to plead, ſigned Interlocutory Judgment, and executed a Writ of Inquiry in *Eaſter* Vacation; but the Attorney for Plaintiffs finding himſelf to be irregular, in the Beginning of laſt Term obtained a Rule to quaſh the Writ of Inquiry and Inquiſition, waived his Judgment, and 26th *May* in laſt Term, which Term began 25th *May*, gave a new Rule to plead, *May* 31ſt Defendant pleaded a Sham Plea, and Plaintiff replied, concluding *ad Patriam*; and gave eight Days Notice of Trial, incluſive, for the laſt Sitting within laſt Term. Defendant joined Iſſue; but objected to the Notice of Trial, refuſing to accept ſhort Notice; whereupon Plaintiff countermanded, and gave new Notice for the Sitting after laſt Term; when Plaintiff obtained a Verdict on a Promiſory Note, without Defence. Defendant now applied for a *Superſedeas*, for Want of Plaintiff's proceeding to Final Judgment, within three Terms after Declaration, incluſive. And the Court was of Opinion, that Defendant was intitled to a *Superſedeas*. Defendant is not to be prejudiced by the Miſtake of Plaintiff's Attorney; which cannot be conſidered in the ſame Light as an accidental Omiſſion was, in the Caſe of *Aſhley* and *Sutton*, *Hil.* 12 *Geo.* 2. Defendant is within the Words of the Rule, which is to be conſtrued in Favour of Liberty. But it appearing, that Defendant was detained in Cuſtody by three other Actions, and being liable to be immediately charged in Execution in this Action, the Court thought it nugatory to grant a *Superſedeas*; and the Rule to ſhew Cauſe why a *Superſedeas* ſhould not be iſſued was diſcharged. *Wynne* for Plaintiff; *Skinner* for Defendant.

Childs *againſt* Prows. Hilary 18 Geo. 2.

WITHIN two Terms after Final Judgment, Plaintiff, inſtead of charging Defendant in Execution, charged him with a Declaration in an Action of Debt on the Judgment.

The Court held this Declaration vexatious, and no Cauſe againſt a *Superſedeas*; and the Rule to ſhew Cauſe why a *Superſedeas*, was made abſolute. *Gapper* for Defendant; *Wynne* for Plaintiff.

Abdy, Adminiſtrator, *againſt* Hopkins, Widow. Abdy, Aſſignee, &c. *againſt* The Same.

PLaintiff had two different Cauſes of Action againſt Defendant, one as Adminiſtrator, the other as Aſſignee. Defendant was arreſted at Plaintiff's Suit, as Adminiſtrator; but in the Title of the Affidavit for Bail, Adminiſtrator was omitted, though put into the Writ. Defendant remained in Cuſtody for Want of Bail. Plaintiff did not declare as Adminiſtrator, agreeable to his Writ, which was a *Teſtat'* out of *Middleſex* into *Surry*, but made a new Affidavit of his other Demand as Aſſignee, and delivered a Declaration in *Surry* for it, indorſed for Bail. Rule to ſhew Cauſe why *Superſedeas*, in the firſt Cauſe, made abſolute, the Affidavit being a Nullity; but the Arreſt is not void in the ſecond Cauſe. The Rule diſcharged.

Parſons, Widow, *againſt* White. Eaſter 19 Geo. 2.

DEfendant, arreſted by a *Capias* at Plaintiff's Suit, as Executrix of her late Huſband, removed himſelf to the *Fleet*. Plaintiff finding her Action wrong as Executrix, made a new Affidavit for Bail, and charged Defendant with a new Declaration in her own Right. Defendant moved for a Common Appearance and *Superſedeas*; inſiſting, that as his Impriſonment was wrongful *ab origine*, Plaintiff ought not to graft upon it. No Oppreſſion appears, but the Nature of the Demand was miſtaken. If there had been two different Cauſes of Action, the ſecond Declaration would have been a good Charge; but there being but one and the ſame Cauſe of Action, Rule abſolute to ſet aſide Proceedings and Judgment, without Coſts. *Bootle* for Defendant; *Prime* for Plaintiff.

Stannard *againſt* Fleet.

A Peremptory Rule being ſerved on Sheriff of *Suffolk* to bring Defendant's Body into Court, the Sheriff, inſtead of putting in Bail above (as uſual) brought the Defendant in Perſon into Court. The Court committed him to the *Fleet*, charged with the Writ of *Capias ad reſpondend'* at the Plaintiff's Suit.

Pryme and others *againſt* Moore. Hilary 20 Geo. 2.

DEfendant, whilſt at large, was ſerved with a Copy of Proceſs, with Notice to appear; but before Declaration became a Priſoner in the *Fleet*. Plaintiff, by Virtue of an Affidavit of Service, entered an Appearance for Defendant, left a Declaration in the Office, and gave Defendant Notice thereof. Defendant moved to ſet aſide the Declaration and ſubſequent Proceedings; inſiſting, that as he was a Priſoner at the Time of the Declaration, it ought to have been delivered to the Turnkey of the *Fleet*. It was urged for the Plaintiff, that as the Proceedings was regularly commenced under the Statute, they had a Right to purſue the Method preſcribed by the Rule of Court to eſtabliſh the Practice thereupon; but Defendant being diſabled from coming abroad to take the Declaration out of the Office, and there having been no Method to charge a Priſoner with a Declaration, but by *Habeas Corpus*, till the Statute of King *William* the Third, the Court thought the Declaration ſhould have been delivered at the *Fleet*, and made the Rule abſolute. *Willes* for Defendant; *Bootle* for Plaintiffs.

Culme *againſt* Dingle. Trinity 21 Geo. 2.

DEfendant was a Priſoner in the County Gaol for *Devon*, charged by the preſent and other Plaintiffs. Plaintiff diſcontinued his Action, and paid Coſts; and then ſerved a Copy of a common *Capias*, with Notice to appear, on Defendant in Cuſtody; and, on Affidavit thereof, entered an Appearance purſuant to the Statute, left Declaration in the Office, and gave Notice thereof to Defendant; and for Want of a Plea ſigned Judgment, and executed *Fieri facias*.

Defendant obtained a Rule to ſhew Cauſe why the Proceedings ſhould not be ſet aſide; inſiſting, that he ought to have been charged with the Declaration as a Priſoner. But as Plaintiff, ſince the Act to prevent vexatious Arreſts, had no other Way of charging Defendant with a common *Capias* than as above, the Method Plaintiff has taken is regular.

The Notice of the Declaration was dated 28th *January*, to plead within eight Days; and the Judgment ſigned 5th *February*. Objected, That the Judgment was ſigned a Day too ſoon; but over-ruled. The Words of the Notice are not, *from the Day of the Date*, but *from the Date*, which is the Delivery. Rule diſcharged. *Draper* for Defendant; *Gapper* for Plaintiff. This Caſe differs from *Prime and others* againſt *Moore* laſt *Hilary* Term, where Defendant was arreſted when at large, and became a Priſoner in the *Fleet* before Declaration.

Meredith *againſt* Barry, Eſquire, commonly called Lord Buttevant.

AFTER Defendant was ſuperſedable for Want of Proſecution, Plaintiff applied for Leave to diſcontinue; which was ordered without Prejudice; and after the Diſcontinuance, Defendant was ſuperſeded, but being detained in the *Fleet* by other Cauſes, Plaintiff makes a new Affidavit of his old Debt, (adding another ſmall Demand not bailable) and charged Defendant with a new Declaration indorſed for Bail. The Court determined, That Defendant ought not to be held to Bail for the old Cauſe of Action, as to which he had been ſuperſeded, and ordered him to be diſcharged as to the new Declaration, on entring a common Appearance. *Willes* for Defendant; *Skinner* for Plaintiff.

Leeke *againſt* Leighton, Baronet.

DEfendant, a Priſoner in the *Fleet*, was charged twice in Execution at Plaintiff's Suit, once before and once after 1ſt *January* 1747. Defendant moved to pay Principal, Intereſt, and Coſts on the Judgment, whereby he was charged before 1ſt *January*, to prevent Plaintiff's compelling him to deliver up his Eſtate and Effects, purſuant to the inſolvent Debtors Act. The

Rule to ſhew Cauſe was made abſolute. *Skinner* and *Willes* for Defendant; *Prime* and *Poole* for Plaintiff.

Watt *againſt* Alanſon. Trinity 22 & 23 Geo. 2.

DEfendant, who was charged in Execution 5th *January* 1748, petitioned the Court the laſt Day of laſt Term, for a Rule to be carried before the Judges at next *Northumberland* Aſſizes, in order to be diſcharged under the Lords Act, and had a Rule to ſhew Cauſe; which was now diſcharged. The Petition came too late; it ſhould have been preferred, as required by the Act, before the End of laſt *Eaſter* Term. *Bootle* for Plaintiff.

White *againſt* Hawkes. Eaſter 23 Geo. 2.

PLaintiff having complained to the Court againſt Mr. *Carter*, his Attorney, for not attending at *Oxford* Aſſizes, to oppoſe Defendant's Diſcharge under the Lords Act; and *Carter*, for Anſwer, having made Affidavit that he did attend the *Niſi prius* Court for that Purpoſe, ready to pay Defendant 2*s.* 4*d.* and to give him Plaintiff's Note for 2*s.* 4*d. per* Week, in Order to keep him in Cuſtody, as directed; but that Defendant was accidentally diſcharged on the Crown Side, without *Carter*'s Knowledge: And before he got out of Cuſtody, or an Order for his Diſcharge was drawn up, Notice was given to *Wiſeman* the Gaoler, that the Diſcharge was obtained by Surprize, and the Order ſtopped by the Judge; a Tender of 2*s.* 4*d.* and Plaintiff's Note was made Defendant, who refuſed to accept the ſame, and inſiſting on his Liberty, *Wiſeman* let him go. The Court made a Rule on *Wiſeman* to ſhew Cauſe why an Attachment ſhould not be made againſt him. But the Fact coming out to be, that Defendant had made an Aſſignment of his Effects to Plaintiff, previous to his Diſcharge in the Crown Court, where the Gaoler attended, and heard the Plaintiff called in the uſual Manner; and no Contrivance in Defendant's Favour appearing in the Gaoler, the Court diſcharged the Rule, and left Plaintiff to his Action for an Eſcape; not thinking it proper to puniſh the Gaoler in this ſummary Way, or to aſſiſt him againſt an Action. The Order ſeems requiſite to be drawn up; the Gaoler cannot defend himſelf without it.

The Practice has ſometimes been to diſcharge Priſoners of this Sort in the *Niſi prius* Court, and ſometimes in the Crown Court, if the Buſineſs there be firſt finiſhed; but then Notice thereof ſhould be always publickly given in the other Court. The Aſſignment ſhould always be previous to the Diſcharge. Where a Priſoner is not ordered to be diſcharged, but remanded on Plaintiff's undertaking to pay him 2*s.* 4*d. per* Week, his Effects ought not at that Time to be aſſigned, (as has been the Practice, in order that after Failure in Payment, Defendant may be intitled to apply to the Court from whence the Execution iſſued, for his Diſcharge there;) but if Plaintiff ſhould fail to pay the weekly Allowance, Defendant may either apply to be brought into Court at the Aſſizes, to be diſcharged there for that Cauſe, and then make an Aſſignment; or to be diſcharged by the Court above, ſhewing an Aſſignment executed, by Affidavit. *Willes* for *Wiſeman*; *Prime* for *Carter*; *Belfield* for Plaintiff.

Parker, one, &c. *againſt* Harvey. Eaſter 23 Geo. 2.

DEfendant, who had been brought into Court at *Lincolnſhire* Aſſizes by Rule, purſuant to the Lords Act, and remanded to Priſon, on Plaintiff's undertaking to allow him 2*s.* 4*d. per* Week, applied to this Court to be diſcharged for Nonpayment of his weekly Allowance. The Undertaking appeared to be dated 1ſt *March* 1749, for Payment of 2*s.* 4*d.* on *Monday* in every Week. Plaintiff had not made regular Payments; when four Weeks were due, 2*s.* 4*d.* only tendered, after five Weeks due, 7*s.* only tendred; after the firſt Default, no Tender of the Money due on *Monday* was made till the *Saturday* following. A Miſtake is not to be taken Advantage of, if the Tender be recent; but in the preſent Caſe, the Omiſſions are not to be diſpenſed with. Rule abſolute to diſcharge Defendant. *Prime* for Defendant; *Willes* for Plaintiff.

Pennington *againſt* Welch. Trinity 24 Geo. 2.

DEfendant being brought into Court, by Virtue of a *Habeas Corpus ad Satisfaciendum* directed to the Warden of the *Fleet*, to be charged in Execution on a Judgment obtained by Plaintiff, inſiſted, That as he had been ſuperſedable for two Years paſt, for

Want of Plaintiff's proceeding to Judgment within three Terms after Declaration, he ought not to be charged in Execution. Whereupon the Court remanded him uncharged in Execution, but detained at other Plaintiffs Suits.

Peck *againſt* Adams.

THE Defendant was arreſted by Writ returnable in *Michaelmas* Term laſt, and remained in Cuſtody after the End of laſt *Hilary* Term; Defendant became ſuperſedable for Want of Plaintiff's declaring againſt him; but not applying for a *Superſedeas*, and ſtaying in Priſon till laſt *Eaſter* Term, Plaintiff then diſcontinued his firſt Action; and after tendring Defendant 6*s*. 8*d*. Coſts taxed on the Diſcontinuance, charged Defendant in Cuſtody of the Sheriff of *Hertfordſhire*, with a new Writ for the old Cauſe of Action. Rule abſolute for *Superſedeas*, on entring a common Appearance. Diſcharged as to Coſts. *Bootle* for Defendant; *Wynne* for Plaintiff.

Tracy *againſt* Garmſton and another. Trinity 24 Geo. 2.

DEfendant *Garmſton* was arreſted by Proceſs returnable laſt *Michaelmas* Term; but the other Defendant (who abſconded) could not be taken; and Plaintiff not being in a Capacity to declare in this Joint-Action till the other Defendant was brought into Court, or outlawed, endeavoured to excuſe himſelf for not declaring within two Terms, by alledging that he was proceeding to outlaw the other Defendant. Lord Chief Juſtice thought, that Plaintiff ought to be allowed a reaſonable Time to outlaw the other Defendant; but in this Caſe, he has not ſhewn that he uſed all Diligence, as he ought to have done. Rule abſolute to ſuperſede Defendant *Garmſton* for Want of a Declaration. *Hayward* for Defendant; *Willes* for Plaintiff.

Price *againſt* Everett. Mich. 24 Geo. 2.

DEfendant having been brought into Court in purſuance of the Lords Act, and remanded to the *Fleet* on Plaintiff's undertaking in Writing to allow him 2*s.* 4*d.* a Week, was afterwards made a Turnkey of the Priſon Gate, (a Place of Profit.) Plaintiff moved the Court, and obtained a Rule to ſhew Cauſe why the Allowance ſhould not be reduced to 6*d. per* Week, or ſuch other Sum as the Court ſhould think fit, or Defendant be removed from his Place of Turnkey. On ſhewing Cauſe, the Court thought that Defendant ought not to ſuffer by his good Behaviour, which had merited the Warden's Favour, and preferred him to a Place of Truſt and Profit; and that the weekly Allowance having been once determined at 2*s.* 4*d.* cannot be lowered, though at firſt it might have been ſettled at a ſmaller Sum. The Rule was ordered to be diſcharged. *Willes* for Plaintiff; *Agar* for Defendant.

Smith *againſt* Peronet. Hilary 24 Geo. 2.

DEfendant obtained a *Superſedeas* for Want of Proſecution; but having, whilſt in Cuſtody, drawn a Bill of Exchange on a third Perſon, in Plaintiff's Favour, for Part of Plaintiff's Original Debt, which Draught was refuſed to be accepted, Plaintiff, as Defendant was going out of Priſon, cauſed him to be arreſted, and held to Bail, as the Drawer of ſaid Bill. Defendant ſwore, that by Agreement between him and Plaintiff, the Draught, if not accepted, was to be delivered back to Defendant. The Court thought, that by this Draught, which, if accepted and paid, would have *pro tanto* diſcharged Part of the Original Demand, no new Debt was created, ordered a *Superſedeas* to the new Action, on entring a common Appearance. *Willes* for Defendant; *Prime* for Plaintiff.

Gibbs *againſt* Tupigny de Maily. Trinity 24 & 25 Geo. 2.

DEfendant, a Priſoner in the *Fleet*, being ſuperſedable for Want of Plaintiff's proceeding to Judgment within three Terms after Declaration, ſummoned Plaintiff before Mr. Juſtice *Birch*; whereupon Plaintiff (having obtained Judgment after the three Terms were expired) immediately brought a *Habeas Corpus ad Satisfaciendum*, and charged Defendant in Execution. Defendant then applied to the Court, and obtained a Rule to ſhew Cauſe why he ſhould not be ſuperſeded, for Want of Plaintiff's proceeding to Judgment within Time; which Rule was afterwards made abſolute. The Court being of Opinion, that Defendant had been wrongfully detained in Cuſtody from the Time he became ſuperſedable; and that Plaintiff ought not to graft a good Charge on a wrongful Impriſonment. *Prime* for Defendant; *Willes* for Plaintiff.

Linthwaite *againſt* Bigbie and Allardyce. Trinity 25 & 26 Geo. 2.

PLAINTIFF obtained a Treaſury Rule to ſhew Cauſe why he ſhould not have Time to declare againſt *Allardyce*, who was in Cuſtody, (*Bigbie* abſconding, Plaintiff was proceeding to Outlawry againſt him.) A Caſe quoted from Secondary *Townſend*'s Notes, *Fiſher* againſt *Tucker and another*, *Hilary* 2 *Geo.* 2. where one of the Defendants being in Cuſtody, was ſuperſeded in Favour of Liberty, though Plaintiff could not declare till the other Defendant, who abſconded, was brought into Court or outlawed. *Vide Tracy* againſt *Garmſton and another*, *Trin.* 24 *Geo.* 2. where Lord Chief Juſtice thought, that if Plaintiff proceeds with reaſonable Speed to outlaw the abſconding Defendant, the other Defendant, pending that Proceeding, ought not to be ſuperſeded. Rule abſolute, without Prejudice to Defendant *Allardyce*'s Application for a *Superſedeas*.

Roquett *againſt* Roquett. Trinity 26 & 27 Geo. 2.

DEFENDANT, an inſolvent Debtor was brought into Court the firſt Time by Rule, in purſuance of the Lords Act, and diſcharged, making an Aſſignment of his Effects. A promiſory Note was offered Defendant for Payment of 2 *s.* 4 *d. per* Week, given by Plaintiff at *Paris*, where he reſided, but no regular Affidavit of Plaintiff's ſigning the Note being produced, ſworn before a Judge or Commiſſioner of this Court, Defendant cannot be compelled to accept it. Plaintiff's Attorney offered his Note for 2 *s.* 4 *d. per* Week; but ſuch Notes have been often refuſed. Plaintiff's Attorney deſired further Time; but as Defendant's Application was made laſt Term, and Plaintiff's Attorney had agreed that Defendant ſhould have the Benefit of the Act this Term, further Time was denied.

Keeling *againſt* Elliott. Trinity 28 Geo. 2.

PLAINTIFF brought his Action originally in the Court of the Town and County of *Kingſton* upon *Hull*, and held Defendant to Bail by Affidavit; Plaintiff afterwards removed the Proceedings into this Court by *Certiorari*; Defendant who remained in Priſon for want of Bail, applied to be diſcharged on entring a common Appearance. The Court were of Opinion, That the *Certiorari* having been brought by Plaintiff to remove his own Action he has loſt his Bail; the Practice is the ſame in civil as in criminal Caſes. Where Defendant brings a *Certiorari* to remove an Indictment into the *King's Bench*, the Bail is continued; but where the *Certiorari* is brought by the Proſecutor, the Bail is diſcharged. *Cro. James* 363. *Beſton* and *Buller*. 2 *Lord Raymond* 837. *Criſp* againſt *Smith*; the *Certiorari* is admitted to be regular, but by it Plaintiff has relinquiſhed the Bail in the inferior Court, he has loſt Bail by his own Act. Defendant ought to be protected againſt Vexation, and from being harraſſed. Rule for a common Appearance, and *Superſedeas* made abſolute, by the Opinion of three Judges; Lord Chief Juſtice not concurring. He compared it to a Diſcontinuance; a Plaintiff may by ſettled Practice after holding a Defendant to Bail diſcontinue his Action, begin *de novo*, and hold Defendant to Bail again; Plaintiff's being liable to Payment of Coſts on a Diſcontinuance, does not materially vary the Caſe. *Poole* for Defendant; *Draper* for Plaintiff.

Atkinſon and Wilſon *againſt* Freeburrow. Mich. 29 Geo. 2.

AFTER *Cepi Corpus* returned, a peremptory Rule was ſerved on the Sheriff of *Nottinghamſhire*, to bring into Court the Body of Defendant within ſix Days; the Sheriff moved to diſcharge ſaid Rule, upon the Under-Sheriff's Affidavit ſworn the 11th Day of *June* 1755, that Defendant was in the Sheriff's Cuſtody charged with a *Capias ad reſpondend'* at Plaintiff's Suit; Plaintiff produced an Affidavit in anſwer to the Under-Sheriff's ſhewing that Defendant was ſeen at large at *Newark* (ten Miles from the County Gaol at *Nottingham*,) on 16 *April* 1755. It was urged for the Sheriff, that Defendant has now been ſuperſeded for want of a Declaration within two Terms: the Court laid the Eſcape and *Snperſedeas* out of the Caſe. Where a Sheriff takes a Bail Bond, by the Rule to bring in the Body is meant perfecting Bail above; but where a Defendant remains in Cuſtody for want of Bail, Plaintiff muſt declare againſt him in Cuſtody of the Sheriff; or if he would remove him to the *Fleet* Priſon, he muſt do it by *Habeas Corpus ad reſpondend'*. The Court never expect a Sheriff to bring the Defendant's Body into Court by Virtue of the common Rule. *Vide Morſe* againſt *Warren*, *Mich.* 11 *Geo.* 2. *Poole* for Plaintiff; *Prime* for the Sheriff of *Nottinghamſhire*.

Webb *againſt* Dorwell. Hilary 29 Geo. 2.

PLAINTIFF not having declared againſt Defendant, a Priſoner before the End of *Trinity* laſt (which was the ſecond Term,) Defendant 28 *October* laſt took out a Judge's Summons for a *Superſedeas*; Plaintiff's Agent as uſual had Time to write to his Client, and not being able to ſhew Cauſe againſt it, on 11 *November* laſt in the Evening, a *Superſedeas* was ordered, which could not be ſealed that Night, but on the 13th was ſent *per* Poſt into the Country. Plaintiff after the Summons ſerved, *viz.* firſt *November*, charged Defendant in Cuſtody with a

Declaration, and on the 13th ſigned Judgment, ſent down a *Teſtat. Capias ad ſatisfaciendum*, and charged Defendant in Execution. The Court held Plaintiff's Proceedings ſubſequent to the Time of Defendant's being ſuperſedable, and having applied for a *Superſedeas*, to be irregular. Rule abſolute to ſet aſide the Judgment and *Teſtat. Capias ad ſatisfaciend.* and for Defendant's Diſcharge with Coſts, Defendant conſenting to bring no Action. *Poole* for Defendant; *Hewit* for Plaintiff.

Courtauld *againſt* Iſrael. Mich. 30 Geo. 2.

DEfendant having been diſcharged by the inſolvent Debtors Act 28th *Geo.* 2. moved to be diſcharged out of Priſon, producing an Affidavit, that the Debt for which he was detained in Execution was due before 1ſt *January* 1755. [the Day in the Act] and a Duplicate of his Diſcharge. Defendant had been ſerved with Proceſs, and after Appearance entred by Plaintiff, *ſecund. Statut.* with Notice of Declaration left in the Office, (pleading nothing) Judgment was entred by default; Plaintiff in Anſwer to this made Affidavit that the Debt was not due until ſome Months after 1ſt *January* 1755. whereupon the Rule was diſcharged and the Queſtion avoided, whether or no it was incumbent on Defendant to have pleaded his Diſcharge under the inſolvent Act? *Prime* for Plaintiff; *Davy* for Defendant.

Williams *againſt* Manwairing and Heron. Trinity 30 & 31 Geo. 2.

DEfendant, *Manwairing*, was committed to the *Fleet*, charged with this Action for want of Bail. Defendant *Heron* abſconding, and Plaintiff not being able to bring him into Court by Arreſt, Proceſs to the Outlawry was taken out againſt him, *viz.* an Exigent and Proclamation returnable three Weeks *Trinity*, pending the Proceeding, Plaintiff on the laſt Day of *Hilary* Term laſt, had prematurely (to prevent a *Superſedeas* for Want of Proſecution) delivered a Declaration in the joint Action at the *Fleet* Priſon, before he was intitled ſo to do. Defendant *Heron* not being in Court, nor outlawed; Plaintiff applied to the Court for Leave to withdraw ſaid Declaration delivered by Miſtake, and for Time to declare until the firſt Day of next Term, for which Purpoſe the Rule to ſhew Cauſe was made abſolute. For time to declare in common Caſes, a Treaſury Rule is granted of Courſe. In this Caſe it is fit to grant Plaintiff a reaſonable Time to outlaw the Abſconding Defendant. *Hewitt* for Plaintiff; *Davy* for Defendant *Manwairing*.

Beaſley *againſt* Smith. Trinity 31 Geo. 2.

MOTION for *Superſedeas* for Want of Declaration in this Court, within two Terms; Defendant committed to the *Fleet* (charged *inter al'* with a Bill of *Middleſex*, at Plaintiff's Suit,) before Declaration delivered, Plaintiff delivered a Declaration in the Court of King's Bench, at the *Fleet*, not a Declaration in this Court; which Declaration in the Court of King's Bench againſt a Priſoner in the *Fleet* being looked upon as null and void, the Rule was made abſolute. *Prime* for Defendant; *Hewitt* for Plaintiff.

In the Matter of Yapp an inſolvent Debtor. Mich. 32 Geo. 2.

ON the Motion of Serjeant *Davy* for *Jane Parſon*, a Judgment Creditor, the Court laſt Term made a Rule for Mr. *Richard Fleming*, Aſſignee of the Eſtate and Effects of *Yapp*, to ſhew Cauſe why he ſhould not out of the Eſtate and Effects of *Yapp*, pay to ſaid *Jane Parſon* and the other Judgment Creditors of *Yapp*, the ſeveral Sums of Money due to them reſpectively upon the Judgments recovered by them againſt *Yapp*, before his Diſcharge from Impriſonment; or why ſaid *Richard Fleming* ſhould not be removed and diſplaced from being Aſſignee as aforeſaid.

After hearing Council for *Richard Fleming*, the Aſſignee, and Conſideration had, the Court being of Opinion, that the Fund in the Aſſignee's Hands was equitable and not legal Aſſets, Ordered the Rule to be diſcharged. The Money out of which Payment was to be made, aroſe from the Sale of an Equity of Redemption in an Eſtate of *Yapp*'s, which had been mortgaged by him in Fee. Had the Fund been legal Aſſets, the Judgment Creditors muſt have been preferred to Bond Creditors, &c. but as the Fund is (in the Hands of a Mortgagor) equitable Aſſets, all the Creditors muſt be paid *pari paſſu.*

Brag, one, &c. *againſt* Harriſon. Trinity 33 Geo. 2.

RULE made abſolute for a common Appearance and *Superſedeas*; Plaintiff's Cauſe of Action being as Indorſee of a promiſſory Note payable to one *Ripley* or Order; which Note had been put in Suit againſt Defendant by *Ripley*, and in that Action a common Appearance and *Superſedeas* ordered. *Hewitt* for Defendant; *Nares* for Plaintiff.

Proceſs, Service thereof, Rules, &c.

Wye *againſt* Wright. Mich. 6 Geo. 2.

PER Cur': To make a perfect Service of a Rule, the Original Rule muſt be ſworn to have been ſhewn to the Party at the Time of ſerving the Copy.

Sheridan *againſt* Aſhby. Trinity 6 & 7 Geo. 2.

PLAINTIFF cauſed Proceſs to be ſerved upon Defendant, who afterwards removed from his Houſe; and Plaintiff not being able to find him, followed the firſt Service, and left the Notice of the Declaration under the Street-door of Defendant's empty Houſe. Court held the Judgment regular. *Chapple* for Plaintiff; *Darnal* for Defendant.

The King *againſt* Pike. Mich. 7 Geo. 2.

A Rule *Niſi* for an Attachment was ſerved by putting a Copy under the Door of Defendant's Houſe, and acquainting Defendant, who was in the Houſe, with the Contents. The

Court held this to be inſufficient Service, it being neceſſary that the Original Rule ſhould be ſhewn to the Party at the Time of Service.

Ruſh *againſt* Dale.

THE Court made a Rule for *Forreſt*, Defendant's late Attorney, to ſhew Cauſe why he did not pay Money to the Plaintiff received of Defendant for that Purpoſe, *&c. Darnal* moved, upon an Affidavit of *Forreſt's* concealing himſelf, that Service of the Rule at his Houſe might be good Service. *Per Cur':* The Rule not being for an Attachment, doth not require Perſonal Service.

Hall *againſt* Wilby. Hilary 7 Geo. 2.

URLIN moved to ſtay Proceedings, the Proceſs being ſerved within the Franchiſe of *Bury St. Edmonds*, and not by the proper Officer, contrary to the late Act of Parliament. *Per Cur':* The Act only preſerves and ſaves the Juriſdiction of particular Liberties. The Perſon injured muſt bring his Action, the Court cannot ſtay Proceedings.

Chance *againſt* Ruſſel.

BIRCH moved to ſtay Plaintiff's Proceedings, the Copy of the Proceſs ſerved upon Defendant not being directed to the Sheriff of any County. The Court denied the Motion, becauſe Defendant cannot take Advantage of this as an Irregularity; if the Writ be vicious, Advantage muſt be taken thereof in another Manner.

Longbothom *againſt* Knap and others.

PLAINTIFF ſued out a common *Clauſum fregit*, and the Sum for which he intended to declare in Debt upon a Recognizance of Bail being above 10 *l.* cauſed Defendant to be ſerved with a Copy of the Writ, without any Notice to appear ſubſcribed. Defendant moved to ſtay the Proceedings; and upon hearing Council on both Sides, the Court held the Service to be irregular, being of Opinion that in all Caſes where Proceſs is ſerved, it muſt be with Notice to appear, purſuant to the late Act of Parliament. *Comyns* for Defendant; *Skinner* for Plaintiff.

Smith *againſt* Wintle. Trin. 7 & 8 Geo. 2.

DEfendant moved to ſet aſide the Proceedings, upon an Affidavit that he was never ſerved with Proceſs. A Rule was made to ſhew Cauſe. Upon ſhewing Cauſe, Plaintiff, who ſerved the Writ, made an Affidevit that he put a Copy through a Crevice of the Door of the *Permit Office* in *Moorfields*, Defendant having locked himſelf in, that he plainly ſaw him through the Crevice, that he was very near the Door, and that he acquainted him what the Paper (put through the Crevice) was, which the Court held to be ſufficient Service, and diſcharged the Rule. *Darnal* for Plaintiff; *Birch* for Defendant.

Cutcliffe, an Attorny, *againſt* Standiſh.

THE Affidavit of Service of the Proceſs was as follows, (*viz.*) *That Deponent ſerved Defendant with a Copy of a Writ*, &c. *at the Plaintiff's Suit, except what related to other Defendants.* Defendant moved that Proceedings might be ſtayed. And a Rule was made to ſhew Cauſe, which was afterwards made abſolute on hearing Council on both Sides. *Chapple* for Plaintiff; *Belſield* for Defendant.

Porter *againſt* Kent. Mich. 8 Geo. 2.

BAYNES moved for an Attachment againſt the Sheriff of *Lincoln* for not bringing Defendant's Body into Court, according to a peremptory Rule. The Service was by delivering the Original Rule to the Under-Sheriff. Court made a Rule to ſhew Cauſe.

Buncombe *againſt* Love and his Wife. Eaſter 8 Geo. 2.

THE Proceſs was ſerved upon the Huſband only, and not upon the Wife. Held to be good in lieu of Arreſt. *Chapple* for Plaintiff; *Comyns* for Defendant.

Byers *againſt* Whitaker, in County Palatine of Lancaſter. Trinity 8 & 9 Geo. 2.

THE Court held that the *Teſtat' Capias* is the Proceſs to be ſerved upon Defendant, and not the Chancellor's Mandate; upon reading the Act of Parliament 5 *Geo.* 2. which is explanatory of the Act 12 *Geo.* By the laſt Act the Affidavit of Service of the Proceſs is directed to be ſworn before a Judge of the Court from whence Proceſs iſſued, or a Commiſſioner appointed by ſuch Court, which muſt be intended of the Courts of *Weſtminſter*, none other can appoint ſuch Commiſſioners: Before the laſt Act of Parliament this Court was of Opinion, that the Proceſs to be ſerved muſt be the Proceſs whereby Defendant might have been arreſted before the firſt Act. *Beale* againſt *Smith*, *Mich.* 1 *Geo.* 2. But ſince the laſt Act to explain the former, the Court of *King's Bench*, and this Court, have held that the firſt Proceſs muſt be ſerved. *Birch* for Plaintiff; *Comyns* for Defendant.

Weſtall *againſt* Finch.

DEfendant moved to ſtay the Proceedings, the Proceſs not having been ſerved upon him, but upon another Perſon, and obtained a Rule to ſhew Cauſe. Upon ſhewing Cauſe, it was inſiſted by Plaintiff, that although the Proceſs might be ſerved upon a wrong Perſon, yet an Appearance being now entered, the Defendant was in Court, and the Miſtake was cured: But *per Cur':* The Appearance is entered by Plaintiff, according to the Statute, and by no Means cures the Miſtake. Let the Rule be abſolute. *Hawkins* for Defendant; *Wright* for Plaintiff.

Hilary 9 Geo. 2.

WRIGHT moved to ſtay Proceedings, no Attorney's Name being put to the Copy of the Proceſs ſerved upon Defendant; but the Motion was denied. Plaintiff is not in Fault, but the Attorney.

Bennet *againſt* Sampſon. Eaſter 7 Geo. 2.

THE *Capias ad reſpondendum* was directed to the Sheriff (ſingular) of *London*, teſted *February* 13. which was the Day after the End of laſt *Hilary* Term. *Urlin* moved to quaſh it, alledging Defendant hath no other Remedy to take Advantage thereof, becauſe he cannot have *Oyer* of the Writ; nor will it appear upon the Record in Caſe of a Writ of Error. Court made a Rule to ſhew Cauſe, which was afterwards made abſolute on hearing *Chapple* for Plaintiff. This Writ bearing Teſte in Vacation, is void.

Blackall *againſt* Gould. Trinity 10 Geo. 2.

MOVED to ſtay Proceedings, becauſe no Attorney's Name was ſet to the Writ. Denied. *Warnell* againſt *Revell*, and *Fawks* againſt *Jay*, *Trin.* 5. *Perkin* againſt *Baker*, *Hil.* 5 *Geo.* 2.

Byas *and* Wife *and* Goodfleſh, *againſt* Lyell. Trinity 31 Geo. 2.

In tranſgr' ſuper Caſum. PLaintiff had proceeded againſt Defendant in the old Way, by *Pone* and Diſtreſs; and Defendant moved to ſtay Proceedings, ſuggeſting the ſame to be contrary to the Method preſcribed by the late Act of Parliament to prevent vexatious Arreſts, 12 *Geo.* and 5 *Geo.* 2. and the Queſtion was, Whether by theſe Statutes the old Method of Proceeding be taken away, and another Method inſtituted or not? It was urged for Plaintiff, that before the Statute of *Marlbridge* no *Capias* lay; that the antient Courſe of Proceeding was by Original, and where the Party was returned attached, no Proceſs lay, but a *Diſtringas*, except in Treſpaſs *vi & armis*. In this Caſe the Party is returned attached upon the Original, and no Proceſs to Outlawry lies: The Act of Parliament 12 *Geo.* preſcribes a Method in Caſes where the Cauſe of Action is under 10*l.* and Plaintiff proceeds by Way of Proceſs againſt the Perſon: But here Plaintiffs do not proceed by Way of Proceſs againſt the Perſon, and after the Original returned as aforeſaid, no Proceſs againſt the Perſon can iſſue, and conſequently the Party cannot be ſerved with Proceſs. There is alſo an Exception in the Statute 12 *Geo.* as to Peers and privileged Perſons, who are to be proceeded againſt as by Stat. 12 *W.* 3. but that can relate only to Caſes where the Proceeding is by Way of Proceſs againſt the Perſon, and not by Method of *Pone* and Diſtreſs, which is a dilatory Method in Defendant's Favour, where Eſſoins may be caſt, and remains as it was, not affected by any of theſe Statutes. *Per Cur'*: The Statute of *Marlbridge* and 25 *Ed.* 3. do not take away the antient Method of Proceeding by Original and *Diſtringas*; but where it is returned upon the Original, that Defendant hath nothing whereby he can be attached, a *Capias* againſt the Perſon may be iſſued, and a Proceeding to Outlawry carried on. The Words of the Statute 12 *Geo.* extend only to Proceedings by Way of Proceſs againſt the Perſon, and ſeem to admit Plaintiffs may proceed otherwiſe, as before; and it would be hard to ſay this Clauſe hath repealed the Law by Implication. As to Proceedings againſt privileged Perſons, a new Method by Bill is preſcribed by the Statute of 12 *W.* 3. but the Law not altered. Let the Rule to ſhew Cauſe why the Proceedings ſhould not be ſtayed be enlarged. *Corbet* for Defendant; *Draper* for Plaintiff.

Humphreys *againſt* Mitchell.

PROCESS was ſerved *June* 16. dated 26. Held to be irregular, and Proceedings ſtayed. *Comyns* for Defendant; *Huſſey* for Plaintiff.

Williams *againſt* Faulkner. Trinity 10 Geo. 2.

DEfendant had obtained a Rule for Plaintiff to ſhew Cauſe why the Writ of *Capias ad reſpondendum* ſhould not be quaſhed, there not being fifteen Days between the Teſte and Return thereof. The Rule was diſcharged, this being Matter of Error, and not of Irregularity. *Corbet* for Plaintiff; *Skinner* for Defendant.

Cromwell *againſt* Goodwin.

THE Notice ſubſcribed to the Copy of the Proceſs ſerved, was directed to Plaintiff inſtead of Defendant; and the Notice of the Declaration left in the Office was without Date. Defendant moved to ſet aſide Judgment and Inquiry; and both Notices being faulty, Judgment and Inquiry were ſet aſide. *Agar* for Defendant; *Wright* for Plaintiff.

Taylor *againſt* Nicholls. Mich. 10 Geo. 2.

THE Writ of *Capias ad reſpondendum* was returnable *tres Mich.* Teſte *July* 14, in the ninth Year of the King, (inſtead of the tenth Year.) A Rule was made to ſhew Cauſe why Proceedings ſhould not be ſtayed, which was afterwards made abſolute, no Cauſe being ſhewn.

Byas *and* Wife, *and* Goodfleſh, *againſt* Lyall. Mich. 11 Geo. 2.

THE Rule to ſhew Cauſe why Proceedings ſhould not be ſtayed was diſcharged. *Draper* for Plaintiff; *Hayward* for Defendant. *Vide* this Caſe *Trin.* 10 *Geo.* 2.

Green *againſt* Upton.

THE Rule to tranſcribe the Record was ſerved on Plaintiff in Error, and for want of tranſcribing a *Non-pros* was ſigned. Plaintiff in Error moved to ſet aſide the *Non-pros*, inſiſting that the Rule to tranſcribe ought to have been ſerved on *Forreſt*, his known Attorney in the Cauſe, and not on Plaintiff himſelf; and obtained a Rule to ſhew Cauſe, which was diſcharged, the Court declaring the Service ſufficient. Rules to tranſcribe are excepted out of the general Practice; Service thereof on the Party has been always held good. *Agar* for Plaintiff; *Parker* for Defendant.

Peter *againſt* Reignier, Adminiſtrator.

PLaintiff ſued out a Special Original, Damages 50*l.* and having ſerved a Copy thereof, proceeded as if a *Capias ad reſpondendum* with Notice to appear had been ſerved. Defendant moved to ſtay Proceedings, and obtained a Rule to ſhew Cauſe; before Cauſe ſhewn Plaintiff ſigned Judgment, which was ſet aſide with Coſts, and further Proceſs ſtaid. *Hayward* for Defendant; *Wynne* for Plaintiff.

Plaintiff might have proceeded by *Pone* and Diſtreſs, or taken a *Capias* on his Original which he pleaſed; but Service of a Copy of the Original in this Manner amounts to nothing more than Notice of the Debt. Proceſs to be ſerved according to the late Statute muſt be Proceſs againſt the Perſon.

Haward, Attorney, *againſt* Deniſon. Trinity 11 & 12 Geo. 2.

THE Attachment of Privilege *Teſte* 23d, returnable *January* 31. Defendant moved to quaſh the Writ for want of fifteen Days between the *Teſte* and Return, and a Rule was made to ſhew Cauſe, which was afterwards made abſolute, the Court conſidering the Attachment of Privilege in the Nature of an Original Writ. *Draper* for Defendant; *Skinner* for Plaintiff.

Q. Whether this might not have been taken Advantage of by Plea in Abatement, or by Writ of Error.

Talbot *againſt* Odeham. Mich. 12 Geo. 2.

NOTICE of Declaration was ſworn to be put under the Latch of Defendant's Door on *June* 15, 1738. but not what Time of the Day or Night, nor that the Perſon who left the Notice knocked or endeavoured to open the Door. It did not appear that the Notice came to the Hands of Defendant or any of his Family; but being left ſo openly, might be taken away by any Body. This Notice was held inſufficient, and the Rule to ſhew Cauſe why Judgment ſhould not be ſet aſide, was made abſolute. *Prime* for Defendant; *Eyre* for Plaintiff.

White *againſt* Waſhington.

CApias returnable *tres Mich.* Notice to appear *October* 20. without ſaying *next*, Writ dated *Auguſt* 22. not cured by Plaintiff's entering the Appearance, becauſe the Notice to appear is defective. Defendant may apply any Time before Judgment. Many Blunders were made in the Copy of the *Capias.* Let Plaintiff's Attorney ſhew Cauſe why he ſhould not pay Plaintiff and Defendant their Coſts occaſioned by his Miſtakes. *Skinner* for Plaintiff; *Hayward* for Defendant.

Royſton *againſt* Reed.

RULE for *Ambroſe* late Sheriff of *Eſſex* to ſhew Cauſe why he ſhould not return ſeveral Writs of *Fi. Fa.* and *Venditioni exponas.* *Wynne* ſhewed for Cauſe, that all the Warrants on theſe Writs were granted to Special Bailiffs of Plaintiff's Nomination, and that Indemnities to the Sheriff were indorſed on all the Writs, and ſigned by Plaintiff and his Attorney. *Per Cur'*: The Rule muſt be abſolute. The Indemnities are neceſſary, becauſe Plaintiff may call for Returns, though Warrants were made to his own Bailiffs. *Eyre* and *Prime* for Plaintiff.

Laggett *againſt* Watkins. Hil. 12 Geo. 2.

RULE to ſhew Cauſe why Proceedings ſhould not be ſtaid diſcharged with Coſts. The Objection was, that no Attorney's Name was ſet to the Sheriff's Warrant as required by Act of Parliament; but *per Cur'*, the Warrant is not void, the Act of Parliament is directory only; the Sheriff is blameable, but the Party muſt not ſuffer for his Default. *Skinner* for Plaintiff; *Huſſey* for Defendant.

Collins *againſt* Shapland and his Wife. Eaſter 12 Geo. 2.

HUSSEY for Defendant obtained a Rule to ſhew Cauſe why Judgment ſhould not be ſet aſide, the Wife having never been ſerved with Proceſs. On hearing *Draper* for Plaintiff the Rule was diſcharged, the Service of the Huſband being held ſufficient in lieu of Arreſt, and no Affidavit of ſuch Service Plaintiff was well warranted in entering Appearance for both Huſband and Wife, they not having appeared in Time. Vide *Buncomb* againſt *Love* and Wife. *Paſch.* 8 *Geo.* 2.

Amery *againſt* Smith. Trinity 13 Geo. 2.

MOTION to ſtay Proceedings founded on a Defect in the Affidavit filed with the Filazer, by Virtue whereof Defendant's Appearance was entered by Plaintiff *ſecundum Statutum*, without producing any Affidavit of Defendant. The Deponent in Filazer's Affidavit ſwore that he ſerved a Copy of the Writ annexed to his Affidavit, but ſaid nothing about Notice; and the Notice ſubſcribed to ſaid Writ was not directed to Defendant as required *per Stat.* and Blanks were left for the Day and Year of Appearance. Rule abſolute to ſtay Proceedings. *Draper* for Defendant; *Skinner* for Plaintiff.

Walker *againſt* Haryes, an Attorney, per Bill. Mich. 14 Geo. 2.

C*A. ſa.* returnable at a general Return, *viz. Tres Mich.* and not a Day certain, as it ought to have been, was quaſhed, and Defendant ordered to be diſcharged by *Superſedeas* with Coſts, Defendant conſenting to bring no Action. *Per Cur' :* Defendant cannot take Advantage of this Matter by Writ of Error ; and if he could, it would be unreaſonable to keep him in Cuſtody till the Determination thereof. *Willes* for Defendant ; *Birch* for Plaintiff.

Dixon *againſt* Goodman.

WRIT of Inquiry of Damages was executed before one *Ewens*, verbally appointed by the Coroners of *Norwich*, to whom the Writ was directed. The Objection was, that this Appointment was inſufficient, and ought to have been in Writing, under Hand and Seal. It appeared that Defendant's Attorney attended, challenged a Juryman, croſs examined Plaintiff's Witneſſes, and did not make the Objection now inſiſted upon, till after Plaintiff had gone through his Evidence. The Court held the verbal Appointment no Authority ; but the Objection is waived by making Defence. The Rule to ſhew Cauſe why he Inquiry ſhould not be ſet aſide, was diſcharged. *Urlin* for Defendant ; *Prime* for Plaintiff.

Kerry *againſt* Cade.

PLaintiff appeared for Defendant as a Perſon of full Age, by Affidavit purſuant to the Statute, and proceeded to Judgment. Defendant brought a Writ of Error ; and it being diſcloſed to Plaintiff that Defendant was an Infant, and intended to aſſign Nonage for Error in Fact, Plaintiff moved, and obtained a Rule for Defendant to ſhew Cauſe why the Appearance in Perſon ſhould not be ſtruck out, and why Defendant ſhould not appear by Guardian, or in Default thereof, why Plaintiff ſhould not do it for him. The Court thought Plaintiff's Application came too late, and diſcharged the Rule. *Birch* for Plaintiff; *Draper* for Defendant.

Grice *againſt* Allen. Eaſter 14 Geo. 2.

DEfendant objected, that the Name of the Plaintiff's Attorney was not ſet upon the Sheriff's Warrant, as required *per Stat.* 2 *G.* 2. for Regulation of Attornies, *&c.* and obtained a Rule to ſhew Cauſe why Proceedings ſhould not be ſtayed. Upon ſhewing Cauſe it appeared, that the Attorney's Name was put on the Writ, though not on the Warrant; and by *Stat.* 12 *George* 2. the Law is altered with Reſpect to the Warrant, though not as to the Writ. The Sheriff, under the later Act, is required to ſet the Attorney's Name upon the Warrant, under a Penalty of 5 *l.* and if it be omitted, the Penalty may be ſued for. The Warrant is the Sheriff's Act, and not the Party's. The Plaintiff's Proceedings ought not to be ſtayed by Reaſon of this, the Sheriff's Omiſſion; but Defendant may take his Remedy for the Penalty. The Rule was diſcharged. *Draper* for Defendant; *Urlin* for Plaintiff. *Per Cur':* The Practice of this Court in ſome Inſtances has been found to be wrong, and muſt be exploded. Where an Act of Parliament requires a Thing to be done generally, (without requiring it to be done by any Officer, *&c.* under a Penalty) and doth not ſay that for Want of the Thing required, a Writ, *&c.* ſhall be void, it has been ſaid, that ſuch Act is directory only, and not making the Writ, *&c.* void. Proceedings ought not to be ſtayed; but if a Thing required by Rule of Court be omitted, it is conſtantly held to be irregular, and Proceedings are ſtayed: And ſurely an Act of Parliament ſhould have as great Force, at leaſt, as a Rule of Court. It has been held, that a Rule to bring a Priſoner into Court upon the Lords Act, ought to be perſonaly ſerved on the Creditor, which is often impracticable, and no ſuch Thing is required by the Act. It has been the Practice, on Complaints againſt Sheriffs Officers, *&c.* for Extortion contrary to the Statute 2 *Geo.* 2. to grant a Rule to ſhew Cauſe why an Attachment on the firſt Application; the Rule ought to be to anſwer the Matters contained in the Petition and Affidavits.

Langley *againſt* The Bailiffs and Burgeſſes of Eaſt-Redford. Hilary 15 Geo. 2.

DEfendants were ſued in their Corporate Capacity by common *Capias ad reſpondend'*, and upon Affidavit of Service, an Appearance was entered by Plaintiff *ſecundum Stat'*; and Plaintiff entered Declaration in the Office, reciting, that Defendants were attached to anſwer, (which cannot be.) Defendants moved to ſet aſide the *Capias* and Proceedings thereon; objecting, they ought to be ſued by *Pone* and *Diſtringas*. And the Court were of Opinion, that as Defendants are ſued in a Corporate Capacity, the *Capias ad reſpondend'* is null and void; and the Rule to ſhew Cauſe was made abſolute. It was agreed, that had Defendants themſelves appeared, the Objection had been waived. *Bootle* for Defendants; *Skinner* for Plaintiff.

Chapman *againſt* Ryall and others. Trinity 16 Geo. 2.

AFTER Appearance entered by Plaintiff on Affidavit of Service of Proceſs, Motion by Defendants to ſtay Proceedings, no Attorney's Name being ſet upon the Copy of the Proceſs ſerved on *Child*, one of the Defendants, as required *per Stat.* 12 *George*, and Rule to ſhew Cauſe was made abſolute. *Per Cur'*: The Statute is compulſory, and for Defects in Notices to appear ſubſcribed to Copies of Proceſs ſerved, nothing is more frequent than to ſtay the Proceedings; and where the Defect is in the Copy of the Proceſs, the Reaſon is the ſame. Though the Writ itſelf be right, yet the Copy ſerved is defective, and Proceedings muſt be ſtayed. There is nothing in *Stat.* 5 *Geo.* 2. *cap.* 22. *ſect.* 5. *Stat.* 12 *Geo.* 2. *cap.* 23. *ſect.* 22. or any other ſubſequent Statute, whereby the Statute 12 *Geo.* is altered or repealed in this Particular. *Prime* for Defendant; *Agar* for Plaintiff.

Foot *againſt* Hume. Hilary 16 Geo. 2.

THE Proceſs was ſerved on the Return Day at ———, at five o'Clock in the Afternoon, with Notice to appear that Day, which was the Return Day, 20th *January*, on which Day the Proclamation for Eſſoigns had been made, and the Judge was gone out of Court before Noon; ſo the Return was expired. ——— moved, and obtained a Rule to ſhew Cauſe why Proceedings ſhould not be ſtayed; which was made abſolute on Affidavit of Service, no Cauſe being ſhewn. The Court declared, That Defendant ought to have a reaſonable Time to appear after Service, which is the plain Intention of the Act of Parliament directing the Notice; and that the Notice ought to be ſerved before the Return Day.

Marquand *againſt* The Mayor and Burgeſſes of the Borough of Boſton in Com' Lincoln'. Eaſter 16 Geo. 2.

SPECIAL Original ſued out in *Com' Lincoln'*, and Defendants appeared. Plaintiff declared in *Com' Middleſex*; Defendants appeared; refuſing to accept the Declaration, it was left in the Prothonotary's Office, and taken out and paid for by Defendant's Agent. Plaintiff ſued out a new Original in *Middleſex*. The Court held the Taking the Declaration out of the Office to be a Waiver of the former Proceedings, and diſcharged the Rule to ſhew Cauſe why Proceedings in *Middleſex* ſhould not be ſtayed. Note; An Eſſoign had been caſt and adjourned before Defendant's Appearance; but the Court did not hold that material.

Gentleman *againſt* Bright. Mich. 17 Geo. 2.

RULE for the Bailiff of the Dutchy of *Lancaſter* to return the Sheriff's Mandate on a *Fi. fa.* diſcharged, the Warrant having been directed to Officers of Plaintiff's Nomination, and at his Peril, and not to the Officers of the Bailiff of the Dutchy. *Prime* for the Bailiff; *Skinner* for Plaintiff.

Mallom *againſt* Gent.

RULE to ſhew Cauſe why a Writ of *Non omittas Capias ad reſpondend'* ſhould not be quaſhed, diſcharged. The Objection to the Writ was, that it recited a Mandate to have been iſſued forth by the Sheriff to the Bailiff of a Liberty, without naming what Liberty, but leaving a Blank for the ſame. The Court held the Objection to be valid, and that the proper Way to take Advantage of the Defect is by Motion; but it appearing that Bail was put in to this Writ before a Judge, the Objection now comes too late. *Skinner* for Plaintiff; *Prime* for Defendant.

Wright *againſt* Obeden.

DEfendant was protected by Baron *Hoffman*, a publick Miniſter, and the Protection was regiſtered in the Sheriff's Office, according to the Act of Parliament. A *Capias ad reſpondend'* was delivered to the Sheriff of *Dorſetſhire*, who durſt not execute it, by Reaſon of the Protection, and the Penalty in the Act. Plaintiff ſerved the Sheriff with a Treaſury Rule to return the Writ, which Rule was diſcharged by the Court. *Eyre* for Plaintiff; *Draper* for the Sheriff.

Ogier, Qui tam, &c. *againſt* Hayward. Trinity 19 & 20 Geo. 2.

COPY of Original ſerved, with Notice to appear (as Proceſs to arreſt) irregularly. After Plaintiff's Attorney diſcovered his Miſtake, he applied to the Curſitor, who altered the Return of the Original from *Octabis Hilarii* to *Octabis Purificationis*, and reſealed it; then Defendant was ſummoned by the Sheriff, and being returned ſummoned on the Original, and not appearing, a *Pone* iſſued. Upon Application to ſtay Proceedings, the Court made a Rule to ſhew Cauſe; but before they determined the Queſtion, thought a Motion ſhould be firſt made in Chancery, which was done; and Lord Chancellor, on hearing Counſel on both Sides, ordered the Original Writ to be ſuperſeded *quia improvide emanavit*, with Coſts; becauſe having been once executed (by Service of a Copy, with Notice to appear) though improperly, it could never afterwards be made uſe of for any other Purpoſe. Rule made abſolute to ſtay Proceedings, without Coſts. Several Curſitors attended the Court, but did not agree; they reported the Practice differently. *Skinner* and *Bootle* for Defendant; *Prime*, *Willes*, *Draper* and *Leeds* for Plaintiff.

Maſon *againſt* Obrien, Eſquire, Earl of Inchiquin in the Kingdom of Ireland, having Privilege of Parliament. Mich. 20 Geo. 2.

SUMMONS returnable *Tres Mich. Diſtringas* returnable 31ſt *October*, *Alias Diſtringas* returnable 7th *November*, 40 *s.* Iſſues returned. *Bootle*, for Plaintiff, moved to increaſe Iſſues on the *Pluries Diſtringas* to a good Sum, producing an Affidavit that the Debt was 152 *l.* The Practice here has hitherto been to double the Iſſues returned from Time to Time, and not farther to increaſe the ſame; but the Courts of King's Bench and Exchequer having done more, this Court, conformable to the Practice of the other Courts, ordered Iſſues to be returned on the *Pluries Diſtringas* to 20 *l.*

Gladman *againſt* Bateman.

COMMON *Capias* ſerved on Defendant, an Infant, with Notice to appear by his Attorney, in the Form preſcribed by the Statute; Defendant appeared by his Attorney, and inſiſted, that having appeared agreeable to the Notice ſerved, he had done all that could be required of him, and refuſed to appear by Guardian. Plaintiff moved, according to the Courſe of the Court, for a Rule, That unleſs Defendant ſhould appear by Guardian within four Days, Plaintiff might have Leave to name a Guardian for him, to appear and defend this Action. Defendant oppoſed the Motion, and his Counſel argued, That the Statutes 12 *Geo.* 2. *c.* 29. and 15 *Geo.* 2. *c.* 27. relating to Service of Proceſs, did not extend to Infants, nor to all Actions not bailable, but only to Actions of Debt and on ſimple Contracts; and that the Plaintiff's Cauſe of Action being for an Aſſault, was out of the Statutes, and Defendant ſhould have been arreſted, as before the Statutes. The Court made the Rule as prayed by Plaintiff, which is the conſtant Practice after an Appearance by Attorney, where Defendant is an Infant. The Form preſcribed by the Statutes cannot be altered. No Notice is taken of the Party's being an Infant, or not in the firſt Proceeding. Infancy is to be pleaded. Rule the ſame now as before the Acts to appear,

pear by Guardian; becauſe the Appearance by Attorney would be Error after a Verdict. If otherwiſe, no Action could be brought againſt an Infant. If this Queſtion had been made recently, ſoon after the Statutes, it might have been doubtful whether they extended to all Cauſes of Action not bailable, or not; but all the Courts, ever ſince the Acts, have taken them ſo to do, and Cuſtom and Practice muſt prevail. The General Rule is, that a defective Appearance muſt be ſet right. *Skinner* for Plaintiff; *Agar* for Defendant.

Wingfield *againſt* Beard, alias Farmer. Trinity 21 Geo. 2.

COPY of Proceſs ſerved in *June*, with Notice to appear at the Return, being the 15th Day of *June*, without inſerting the Word (*next*), or the Year (1747.) Rule abſolute to ſtay Proceedings. *Prime* for Defendant; *Willes* for Plaintiff.

Valentine *againſt* Hawkins. Eaſter 21 Geo. 2.

CURRER, the Father, Plaintiff's Attorney, in Favour of his Son, *Currer* junior, Filazer of *Suffolk*, and in Prejudice of the Filazer of the County of *Kent*, though Plaintiff and Defendant both dwelt in *Kent*, where the Cauſe of Action aroſe, and had never any Dealings together in *Suffolk*, ſued a *Teſtat' Ca'* from *Suffolk* into *Kent*, out of his Son's Office, in the Name of one *Mulliner*, an Attorney, inſtead of a *Capias* in *Kent* from the proper Filazer. The Court held this to be unwarrantable and irregular, and ſet aſide the Proceedings, with Coſts, to be paid by *Currer* ſenior, to both Parties. *C. Valentine*, a Bailiff, complained of by Defendant, denied the Charge; and as to him the Rule to ſhew Cauſe why an Attachment, was diſcharged. *Skinner* and *Poole* for Plaintiff and the two *Currers*; *Prime* and *Draper* for Defendant; *Wynne* for *C. Valentine* the Bailiff.

Green *againſt* Littleton, Eſquire. Trinity 21 & 22 Geo. 2.

PLaintiff's Debt appeared by Affidavit to be 230*l.* eighty Shillings Iſſues had been returned on the *Alias Diſtringas.* Rule that the Sheriff of *Middleſex* ſhall return 20*l.* Iſſues on the *Pluries Diſtringas.* *Draper* for Plaintiff.

Ridley *againſt* Wilſon.

DATE of the Writ omitted; Penalty for the Omiſſion 10*l.* on the Officer, *per Stat. Will.* 3. Rule to ſtay Proceedings made abſolute. *Poole* for Defendant; *Skinner* for Plaintiff.

Wortley, Eſquire, *againſt* Pitt, Eſquire. Mich. 22 Geo. 2.

PLaintiff's Debt appeared by Affidavit to be 1950*l.* Forty Shillings Iſſues had been returned on the firſt *Diſtringas.* Rule that the Sheriff of *Middleſex* ſhall return 20*l.* Iſſues on the *Alias Diſtringas.* *Bootle* for Plaintiff.

Holt junior *againſt* Hawkes. Trinity 22 & 23 Geo. 2.

THE *Capias ad reſpondend'* was made returnable before the King's Juſtice, inſtead of Juſtices, at *Weſtminſter*; and there were ſix Days only, inſtead of fifteen, between the *Teſte* and Return. Proceedings ſtayed, with Coſts.

Wortley, Eſquire, *againſt* Pitt, Eſquire.

BOOTLE, for Plaintiff, moved to increaſe the Iſſues on *Pluries Diſtringas*, (Debt ſworn to be 2000 *l.* and upwards), laſt Iſſues 20 *l.* now five Times as much (the uſual Way here) 100 *l.*

Wortley Eſquire, *againſt* Pitt, Eſquire. Mich. 23 Geo. 2.

ON *Pluries Diſtringas* Iſſues increaſed from 100 *l.* to 500 *l.* *Bootle* for Plaintiff.

Highmore *againſt* Barlow, in Ejectment. Trinity 24 Geo. 2.

RULE to ſhew Cauſe why the Time for returning a *Certiorari* to the Mayor's Court of *London* ſhould not be enlarged, and the *Certiorari* quaſhed. The Practice appearing to be, that in Ejectment a Writ of *Habeas Corpus* is the proper Proceſs to remove the Plaint (under which the Defendant muſt appear in this Court, and enter into the Common Rule, and Plaintiff muſt declare *de novo*) and not a Writ of *Certiorari*, as in Replevin, whereby, after the Record removed, the Parties are to proceed upon it, and not to begin *do novo*. *Fitz. Nat. Brev.* 557. *Letter* L. Rule abſolute to quaſh *Certiorari*, *Habeas Corpus* to be taken out. *Poole* for the Mayor, *&c.* *Bootle* for Plaintiff.

Philmore and others *againſt* Sir William Stanhope.

THE Debt ſworn to be 290 *l.* and upwards. On the *Alias Diſtringas* 4 *l.* Iſſues were returned. The Court ordered, that on the *Pluries Diſtringas*, the Sheriff ſhould return Iſſues to 20 *l.* *Draper* for Plaintiff.

Boſwell *againſt* Roberts. Trinity 24 Geo. 2.

OBjections, That no Writ was ſued out, and that the Copy of a pretended Writ was delivered to Defendant, incloſed in a Letter. But it appearing, that the Writ had been ſigned by the Filazer before ſerved, and the Delivery of the Copy made Service by Defendant's opening the Cover and taking out the Copy; there being no Occaſion to ſhew the Original Writ at the Time of Service. The Rule to ſhew Cauſe why Proceedings ſhould not be ſtayed was diſcharged. *Prime* for Plaintiff; *Poole* for Defendant.

Philmore and others *againſt* Sir William Stanhope. Mich. 24 Geo. 2.

THE Iſſues returned on the *Pluries Diſtringas* were 20 *l.* Rule that the Sheriff ſhall return 100 *l.* Iſſues on the next *Diſtringas*. Debt ſworn 290 *l.* and upwards. *Draper* for Plaintiffs.

Bax *againſt* Culmer. Hilary 24 Geo. 2.

RULE abſolute to ſtay Proceedings on Proceſs directed to the Sheriff of *Kent*, ſerved at *Haſtings* within the *Cinque Ports*; the Sheriff of *Kent* has no Juriſdiction within the Cinque Ports, the Writ ſhould have been a *Teſtatum Capias* directed to the Conſtable of *Dover Caſtle*. *Prime* for Defendant; *Poole* for Plaintiff.

Botter *againſt* Colſworthy. Trinity 25 & 26 Geo. 2.

TReaſury Rule for the late Sheriff of *Devonſhire* to return a Writ of *Capias ad reſpondendum* diſcharged. *Terry*, late Under-Sheriff (as uſual in *Devonſhire*) had intruſted Plaintiff's Attorney with blank Warrants, to be directed to bound Bailiffs only; and he had filled up a Warrant on this Writ; and directed and delivered it to a bound Bailiff, purſuant to his Truſt. But it appearing that this Writ, though returnable in *Eaſter* Term 1751, was not carried to the Sheriff's Office, or tendered to the Under-Sheriff, till *April* 1752, the Court thought it unreaſonable to oblige the Sheriff to make a Return. *Prime* for the late Sheriff; *Poole* for Plaintiff.

Dixon, one, &c. *againſt* Atkinſon. Eaſter 26 Geo. 2.

POOLE, for Plaintiff, obtained a Rule to ſhew Cauſe why Plaintiff ſhould not have Leave to take out a ſeparate Attachment of Privilege, to warrant his Judgment againſt this Defendant only, *nunc pro tunc*, agreeable to a joint Attachment of Privilege againſt Defendant and others, returnable in *Hilary* 23 *Geo.* 2. wherewith Defendant having been ſerved, and not appearing, Plaintiff had appeared for him, according to the Statute; and after Judgment, Defendant had brought a Writ of Error. *Willes*, for Defendant, ſhewed Cauſe; inſiſting, That an Attachment of Privilege is always conſidered as an Original Writ, is amendable only in Point of Form, by the Inſtructions given for it: That Plaintiff purchaſed a joint, and not a ſeparate Writ, originally by his own Election; and that the Court of Chancery where an Original is bad, will not grant a good Original; though in ſome Caſes that Court will order an Original where one was ſued out before. Quoted *Chaſe* againſt *Sir John Etheridge*, 2 *Vent.* 130. *Maſſingburn* againſt *Durrant*, 2 *Vent.* 49, *Poole*, for Plaintiff, urged, That as Plaintiff has obtained a regular Judgment for a juſt Debt, unimpeached, it is reaſonable for the Court to interpoſe, in Caſes of Common Proceſs, after Judgment by Default, Plaintiff ſues a Special Original to warrant it. That Attachments of Privilege are not always conſidered as Original Writs, appears by General Rule, *Hilary* 11 *Geo.* 2. whereby four Defendants Names (and no more) may be put into one and the ſame Attachment. The Court were of Opinion, That an Attachment of Privilege is, ſtrictly, neither an Original Writ, nor a *Capias*; it anſwers the Purpoſes of both; it warrants the Proceedings, as well as brings the Party into Court. The Rule *Hilary* 11 *Geo.* 2. muſt have conſidered an Attachment of Privilege as meſne Proceſs. There is no Precedent of a new Attachment to warrant a Judgment. If Defendant had appeared, the Court probably would have ordered a new Attachment (if neceſſary); but by the Appearance entred according to the Statute, nothing is helped or admitted. By the Practice of this Court, the old Joint-Attachment ſeems to be good, and ſufficient to warrant Proceedings thereon againſt Defendants ſeverally, as will be reported to the Court of King's Bench, if they deſire to be informed what is the Practice here. The Rule diſcharged.

Hand, one, &c. *againſt* Groſvenor, one, &c. Plaintiff and Defendant both Attornies of this Court.

RULE to ſhew Cauſe why Proceedings by *Capias* ſhould not be ſet aſide; Defendant objecting that he ought to have been ſued by Bill: But Defendant having appeared to the *Capias* before the Motion, has cured the Miſtake. He may plead his Privilege. The Rule diſcharged.

Hanbury and Wife *againſt* Cowper, one, &c. by Bill.

Mich. 29 Geo. 2.

RULE abſolute to ſet aſide a *Fieri facias*, and the Execution thereof, without Coſts; the Writ was irregular in two Particulars; Firſt, in the Return, which was general 15 *Martin'* inſtead of a Day certain, and Secondly, it commanded the Sheriff to have the Money when levied at the Return in Court, to be rendered to Plaintiff the Huſband only, and not to the Huſband and Wife, though both were Plaintiffs. Plaintiffs produced a Judgment by Confeſſion to warrant the *Fieri facias*, but it was faulty, the Recovery being by the Plaintiff the Huſband only. The Court ordered the Judgment to be rectified agreeable to Defendant's Confeſſion; and that Defendant ſhould bring no Action. *Prime* for Defendant; *Poole* for Plaintiffs.

Aſhley the Younger *againſt* Mackarley and another.

Hilary 29 Geo. 2.

COPY of Proceſs ſerved on the Return Day at 3 o'Clock in the Afternoon. Rule abſolute to ſtay Proceedings. *Vide Foot* againſt *Hume*, *Hil.* 16 *Geo.* 2. *Vol.* 2. *p.* 330. *Davy* for Defendants; *Prime* for Plaintiff.

George the third by the grace of God of Great Britain France and Ireland King defender of the faith and soforth To the Sheriff of Middlesex greeting We command you as we have often times commanded you that you must not by reason of any liberty of your county but that you enter the same and take Richard Spooner Gentleman and John Doe wheresoever they shall be found in your Bailiwick and them safely keep so that you may have their bodies before the Barons of our Exchequer at Westminster on the twenty eighth day of November instant to answer George Gabell Gentleman one of the Clerks of Elias White Gentleman one of the sworn Attornies in the office of the Clerk of the Pleas of our said Exchequer of a plea of trespass And have you there this writ Witness Sir John Skynner Knight at Westminster the nineteenth day of November in the twenty second year of our reign. —

Walpole
19th Novr
1781

Gabell W Walpole

Bail for £70 by affidavit filed

examd

In the Exchequer

Gabell
ag^t } Copy Writ
Spooner

Price *againſt* Schomberg. Trinity 29 & 30 Geo. 2.

THE Sheriffs of *London* returned, on a *Capias ad ſatisfaciendum*, That Defendant's Name was regiſtred in the Secretary of State's Office, as a Domeſtick of Count *Haſlang* a foreign Miniſter, and tranſmitted to them, and ſet up in their Office. Rule to ſhew Cauſe why Sheriffs ſhould not make a better Return diſcharged, the Sheriff's Office is not beneficial but expenſive, they ſhould not be driven into Difficulties, they granted a Warrant; but no Officer durſt execute it. If Defendant be a Domeſtick, the Proceſs is void *per* Statute 7 *Ann.* and Lord Chancellor, and the two Chief Juſtices have Power to inflict corporal Puniſhment. The Sheriffs ſtand by their Return, if it be inſufficient Plaintiff may apply next Term for an Attachment. *Davy* for the Sheriffs; *Hewitt* for Plaintiff.

Elliot *againſt* Parrot. Hilary 31 Geo. 2.

THE *Capias ad reſpondendum* was returnable from the Day of the *Holy Trinity*, in 3 Weeks, and on the Copy ſerved was a Notice ſubſcribed to appear at the Return, being the 26th of *June*, without ſaying *Inſtant*, *next*, or 1757, which the Court now held to be ſufficient, exploding the former Doctrine on this Subject. 'Tis incumbent on Defendant to appear at the Return, which muſt according to the Notice be the 26th *June* in *Trinity* Term, 1757, as appears from the *Teſte*, and the Date of the Writ. Rule to ſhew Cauſe why Proceedings ſhould not be ſtayed, diſcharged. The Writ bore *Teſte* 23d *May*, and was dated 4th *June*. The Copy with Notice was ſerved 7th *June*, 1757. *Poole* for Plaintiff; *Prime* for Defendant.

Duggin *againſt* The Earl of Peterborough. Trinity 32 & 33 Geo. 2.

THE Writ of Enquiry of Damages concluded thus, (*viz.*) Witneſs Sir *John Willes*, Knight, at *Weſtminſter*, and there ſtopped, adding neither Day nor Year, after this Writ executed without any Defence made, on Defendant's Application, a Rule was made to ſhew Cauſe why it ſhould not be ſet aſide, and on Plaintiff's Application a Rule to ſhew Cauſe why it ſhould not be amended by adding a Day and Year, upon hearing Counſel on both Sides, the Court diſcharged both Rules. (Very probably the Writ may be ſufficient as it ſtands.)

Cooper *againſt* Sherbrooke, Eſq; and Mead in Replevin.

Eaſter 33 Geo. 2.

RULE to ſhew Cauſe why Inquiſition on Writ of Inquiry of Damages, final Judgment, and *Fi. fa.* ſhould not be ſet aſide. The Diſtreſs was made for a Rent Charge after *Re' fa' lo'* returned and filed, and Rule to declare given, Judgment *de Retorn' habend'* was ſigned for want of a Declaration, and Wri tof *Retorn' habend'* iſſued 12th *July*, 1759, but never executed. Second of *October* Plaintiff ſued out a Writ of ſecond Deliverance, (which Writ is given by Statute *Weſtminſter* 2, 13 *Ed.* 1.) Defendant did not proceed on the Writ of *Retorn' habend'*; but entred a Suggeſtion on Record according to Statute 17 *Cha.* 2. *S.* 2. and 27th *October*, gave Notice of the Execution of a Writ of Inquiry of Damages, Defendant's not having then had any Notice of the Writ of ſecond Deliverance, though before the Execution of the Writ of Inquiry they had Notice of it. Defendants were Truſtees for the Wife of *John Wilkes*, Eſq; It was on Plaintiff's Part urged that the ſecond Deliverance removes the Judgment of *Retorn' habend'*, and opens the Cauſe again, that if the *Retorn' habend'* be not executed, the ſecond Deliverance ſuperſedes it, if executed it brings back the Diſtreſs. That after the Merits tried under the ſecond Deliverance, the Diſtreſs will be irrepleviſable. On Writ of *Retorn' habend'* awarded Writ of ſecond Deliverance is given the Party to reinſtate him. That the Defendants cannot enter a Suggeſtion, but whilſt the Judgment of *Retorn' habend'* (which is a Non-ſuit) ſubſiſts. But the Court thought otherwiſe, they held that a Writ of ſecond Deliverance (which is not taken away by Statute 11 *Geo.* 2.) is no *Superſedeas* to the Writ of Inquiry of Damages. If Defendants had proceeded on the Writ of *Retorn' habend'*, Court would have ſtopped them; but they have made their Option to proceed under the Statute *Cha.* 2. which they had a Right to do. This Statute and former Statute were intended to prevent Delay, and give the Party a better Remedy. Statute 21 *H.* 8. *C.* 19. gives Damages in Compenſation of Trouble and

Expence, 22 *H.* 8. *C.* 15. gives Coſts where a Non-ſuit. Old Statute mentions Writ of ſecond Deliverance, new Statute does not. *Baker* againſt *Lane*, *Carthew* 253. *Err'*. *Palmer* 403. *Latch.* 72. Hilman *againſt* Taylor. *Trinity* 13 & 14 *George* 2d. In *Communi Banco*, Rule diſcharged. *Whitaker* and *Nares* for Defendants; *Hewitt* and *Davy* for Plaintiff. If this Conſtruction was not put on Statute *Cha.* 2. it would be totally nugatory.

Atkinſon *againſt* Taylor.

Capias ad reſpondendum returnable on the Morrow of the Purification of the bleſſed *Mary*, *bore Teſte* 23d *January*, 33 *Geo.* 2. The Rule made abſolute to ſet aſide the Proceedings as irregular for want of 15 Days between the *Teſte* and Return without Coſts. The Court would not turn the Defendant round to his Writ of Error. *Nares* for Defendant; *Davy* for the Plaintiff.

Prohibition.

Eaglesfield *againſt* Anderſon. Trinity 7 & 8 Geo. 2.

Defendant came to ſhew Cauſe why a Prohibition ſhould not be granted; and objected that no Affidavit was filed, whereby the Libel whereupon Plaintiff had moved, appeared to be a true Copy. *Per Cur'*: The Objection is good. Rule diſcharged. *Wright* for Defendant; *Urlin* for Plaintiff.

Pitt *againſt* Evans. Mich. 12 Geo. 2.

RULE for Civilians to he heard on both Sides, in Relation to a Prohibition. Dr. *Lee* attended to argue againſt the Prohibition; but none would attend to argue for it, as by Affidavit appeared. *Per Cur'*: We ought to hear Civilians on both Sides, or not at all. Enlarge the Rule, perhaps when our Opinion is known, a Doctor may attend on the other Side: Afterwards, no Civilian attending to argue for the Prohibition, Dr. *Lee* could not be heard againſt it.

Maltom *againſt* Acklom, in Prohibition. Hilary 20 Geo. 2.

PLaintiff had obtained a Rule to ſhew Cauſe why a Writ of Conſultation ſhould not be granted, for Want of Plaintiff's proving his Suggeſtion by two Witneſſes within ſix Months, as required by the Statute; and why Plaintiff ſhould not pay double Coſts. Upon Cauſe ſhewn it appeared, that the Declaration had been, by Rule, ordered to be made agreeable to the Proceedings in the Spiritual Court, and thereupon a Prohibition to iſſue. And the Court being of Opinion that the Time for proving the Suggeſtion ought to be computed from the Time of the Amendment, and not farther back. The ſix Months were not expired, and the Rule was diſcharged. *Bootle* for Defendant; *Agar* for Plaintiff.

Reference.

Corrance *againſt* Newſom, Criſp *and* Smith. Mich. 12 Geo. 2.

MOTION *per Prime* to make Rule, *Niſi prius* Rule of Court to refer to Prothonotary *Thompſon* to aſcertain Damages. Denied as improper.

Replevin.

Davis *againſt* Prince, in Replevin. Trinity 26 & 27 Geo. 2.

RULE abſolute to ſtay Proceedings, on Payment of 47 *l.* Rent diſtrained for, and Coſts, after Declaration, but before Avowry. *Willes* for Plaintiff; *Prime* for Defendant.

Reſcous.

Taſker *againſt* Geale. Hilary 6 Geo. 2.

DEfendant was brought into Court by *Habeas Corpus* directed to the Sheriff of *Kent*, and upon the Return thereof it appeared that Defendant was detained by a Writ of *Reſcous* which had been iſſued by the Filazer, founded on a Reſcue returned by the Sheriff on a Writ of *Capias ad reſpondendum* between the Parties, in which Writ of *Reſcous* was contained an *Al' Cap'* againſt the Defendant to anſwer the Plaintiff according to the Tenor of the firſt *Cap'*. Motion was made to diſcharge Defendant, the Writ of *Reſcous* being complex, *i. e.* to anſwer the King for a Contempt, and to anſwer *Taſker* in a Civil Action. The Court denied to make any Rule, the Writ of *Reſcous* being in the common Form. Vide *Officina Brevium*, Title *Reſcous*, fol. 194.

Rex *contra* Philips and others. Eaſter 6 Geo. 2.

A *Reſcous* was returned by the Sheriff of *Eſſex*, and an Attachment being iſſued and Defendants taken thereupon, Defendants entered into Recognizances for their Appearance to be examined upon Interrogatories. The Court were of Opinion that a *Reſcous* returned by the Sheriff is not a Matter traverſable, but amounts to a Conviction, and the Party taken upon an Attachment founded upon a *Reſcous* returned is not proper to enter into Recognizance to be examined upon Interrogatories, ſuch Attachment being in the Nature of a *Capias pro Fine* to bring the Party into Court to be fined, and therefore diſcharged the Recognizance as irregularly taken.

Rex *contra* Baldwin and others.

EYRE moved to quaſh the Return of a *Reſcous* upon a *Fi. Fa.* as a bad Return. Rule to ſhew Cauſe. The Sheriff in this Caſe may raiſe the *Poſſe Com'*, and therefore cannot return a *Reſcous.*

The King *againſt* Tyrell and others. Trinity 6 & 7 Geo. 2.

AN Attachment having iſſued againſt Defendants upon a *Reſcous* returned, *Eyre* moved that they might ſubmit to a ſmall Fine. *Cur'* ordered the Fine to be ſuſpended till after the Trial of an Action to be brought againſt the Sheriff for a falſe Return, and in the mean time permitted Defendants to enter into Recognizances with Sureties.

The King *againſt* Tyrell and others. Eaſter 7 Geo. 2.

THE Sheriff had returned a *Reſcous* againſt Defendants, who had thereupon entered into the uſual Recognizance, and brought an Action againſt the Sheriff for a falſe Return, and obtained a Verdict. *Eyre* moved that the Recognizance might be diſcharged, which was granted upon producing the *Poſtea.*

Scire Facias.

Newarke *againſt* Newarke. Trinity 7 & 8 Geo. 2.

UPON hearing Counſel on both Sides, the Court determined that in a *Sci. Fa.* to revive a Judgment it is not neceſſary to inſert the particular Term wherein Judgment was recovered; the *King's Bench* Form is *Nuper recuperavit*, and the Precedents are both Ways in this Court. It is the ſame in Point of Law in both Courts, *Certum eſt quod certum reddi poteſt*. Upon *Nul tiel Record* it may be made certain by the Record. *Eyre* for Plaintiff; *Darnal* for Defendant.

Poole *againſt* Broadfield. Mich. 8 Geo. 2.

SCI. *Fa.* ordered to be quaſhed on Plaintiff's Motion without Coſts before Plea pleaded, although Defendant had entered an Appearance. *Chapple* for Plaintiff; *Eyre* for Defendant.

Matravers the Younger *againſt* Adlam *and* Browne. Trinity 10 & 11 Geo. 2.

SCI. *Fa.* on Recognizance of Bail. *Belfield* demurred to the *Sci. Fa.* and on the Argument objected that it doth not contain any poſitive Averment that Plaintiff recovered Judgment againſt the Principal; it is expreſſed only, that although Plaintiff recovered Jugment, yet Defendant did not pay the Condemnation-Money, or render his Body to Priſon, *&c.* He objected alſo, that the Recognizance is in an Action at the Suit of *John Matravers*, and the Judgment recovered is by *John Matravers* the Younger, and it cannot be intended that *John Matravers* and *John Matravers* the Younger are one and the ſame Perſon. *Eyre* anſwered, that the *Sci. Fa.* is in common Form, the Recovery of Judgment is ſufficiently averred, and as to the Identity of the Perſon, it is ſet forth by *Sci. Fa.* after reciting the Recognizance, that although the ſaid *John Matravers* by the Name of *John Matravers* the Younger recovered Judgment, *&c.* The Court gave Judgment for the Plaintiff.

Wright *againſt* Treweeke. Mich. 20 Geo. 2.

RULE to ſhew Cauſe why Proceedings on a *Scire facias quare Executio non*, brought by *Spincke*, Executor of the deceaſed Plaintiff, pending a Writ of Error, ſhould not be ſtayed. On ſhewing Cauſe it appeared, That the Record of the Judgment was not tranſcribed into the *King's Bench*; and the *Scire facias* out of this Court was held to be regular. The Executor may revive, but cannot take out Execution pending the Writ of Error. After a Tranſcript, the *Scire facias quare Executio non* ſhould go out of the Court of *King's Bench*. Plaintiff in Error, if deſirous to proceed, might (after a Tranſcript) have a *Scire facias ad audiend' Errores* out of the *King's Bench* againſt the Executor or Adminiſtrator of the Defendant in Error. The Rule diſcharged. *Bootle* for Plaintiff's Executor; *Willes* for Defendant.

Soldiers.

Bowler *againſt* Owen. Mich. 6 Geo. 2.

DEfendant was an Out-Penſioner of *Chelſea* College, and the Queſtion was, Whether or no he was intitled to the Benefit of the Act of Parliament as a Soldier in his Majeſty's Service. The Court held he was not, being under no military Diſcipline, and ſubject only to the Control of the Commiſſioners.

Nichols and others *againſt* Wilder. Eaſter 6 Geo. 2.

PLaintiff brought an Action againſt Defendant, who was a Soldier, for a Debt under 10*l*. and recovered Judgment for 14*l*. 10*s*. Damages and Coſts, and afterwards brought an Action of Debt upon the Judgment, and held Defendant to Bail, who moved to be diſcharged upon a common Appearance, being a Soldier, and the Debt for which he was originally ſued being under 10 *l*. The Court were of Opinion that the Debt which they were to conſider was the Sum recovered by the Judgment, and that Defendant muſt be held to Bail. The ſame Point was determined upon Conſideration, and looking into the Soldiers Act in *Hil.* 5 *Geo.* 2. *inter Bilſon* and *Smith*.

Savage *againſt* Monk. Trinity 11 & 12 Geo. 2.

Defendant, a Soldier in the King's Service, was arreſted and held to Bail in an Action of Debt upon a Judgment, and moved to ſet aſide the Bail-Bond, the original Debt being only 3 *l.* 3 *s.* though the Damages and Coſts recovered did amount to more than 10 *l.* The Court conſidered the Words of the Clauſe in Favour of Soldiers in the laſt and other Acts for puniſhing Mutiny, *&c.* and were of Opinion that the original Sum due in this Action is the Sum recovered by the Judgment. A Debt on Judgment cannot be conſidered as a Debt of a leſs Nature than a ſimple Contract, and the Rule to ſhew Cauſe why the Bail-Bond ſhould not be ſet aſide was diſcharged. *Eyre* for Defendant; *Parker* for Plaintiff.

Flanders *againſt* Nicholls.

Defendant a Soldier in his Majeſty's Service was ſued by Plaintiff in the *Marſhal's Court* for a Debt of Three Pounds Seventeen Shillings and Four Pence, and after a Writ of Inquiry executed in that Court, the Coſts were taxed at Seven Pounds Fourteen Shillings, and Plaintiff ſigned final Judgment for the Sum total, being Eleven Pounds Eleven Shillings and Four Pence. Defendant moved the Judge of the *Marſhal's Court*, that no Execution might be iſſued againſt his Perſon, which upon hearing both Sides was ordered, and the Judge directed Defendant to apply for Coſts, in caſe his Perſon ſhould be taken in Execution. Plaintiff brought an Action in this Court upon the Judgment, and Defendant moved that the Bail-Bond might be delivered up, on entering a Common Appearance, and obtained a Rule to ſhew Cauſe, and for Coſts. The Court on ſhewing Cauſe were of Opinion, that though the Clauſes in the former Acts of Parliament to prevent Soldiers being taken out of the King's Service have hitherto been defective, yet the Clauſe in the laſt Act 13 *Geo.* 2.

is ſufficient, the original Debt being under Ten Pounds, and Plaintiff having proceeded to hold Defendant to Bail after he knew the Opinion of the Judge of the *Marſhal's Court*, the Rule was made abſolute *in omnibus*. *Agar* for Defendant; *Skinner* for Plaintiff.

Superſedeas.

Spincks *againſt* Bird. Eaſter 10 Geo. 2.

AFTER a Writ of Error abated by Death of late Chief Juſtice, Plaintiff with Leave of the Court ſued out a *Ca. Sa.* and an Exigent *poſt. Ca. Sa.* and was proceeding thereon to Outlawry. Defendant brought a new Writ of Error, and had a *Superſedeas*. *Chapple* moved to diſcharge that Part of the *Superſedeas* which extended to ſtop the Proceeding to Outlawry, and obtained a Rule to ſhew Cauſe, which was diſcharged. The Outlawry is founded on the Execution, and the Writ of Error, which ſtays Execution, muſt ſtay the Outlawry, which is the Superſtructure. It appears by the Precedents that the *Superſedeas* is in common Form, and the Words thereof (ſurceaſe putting in Exigent) are well inſerted; the Writ of Error is a *Superſedeas* from the ſealing, though no Contempt is incurred till after Notice of the Allowance. The Writ of Error being brought before the Exigent executed ſtays the Proceedings to Outlawry. *Parker* for Defendant.

See Title **Priſoners.**

Newball *againſt* James. Hilary 13 Geo. 2.

A Copy of the Declaration was delivered at the *Fleet*, Defendant being a Priſoner there, but was not indorſed for Bail by the Prothonotary or his Deputy purſuant to general Rule, *Hil* 8 *George* 2. An Affidavit was filed, and the Declaration properly indorſed; but Plaintiff's Attorney left at the *Fleet* a Copy of the Declaration and Indorſement inſtead of the Original, which was held inſufficient, and the Rule to ſhew Cauſe why a *Superſedeas* ſhould not iſſue to diſcharge Defendant out of Cuſtody upon entring common Appearance was made abſolute. *Bootle* for Plaintiff; *Draper* for Defendant.

Trials, Verdict, &c.

Makepeace *againſt* Stevens, and others; Verdict for Defendant, Hilary 6 Geo. 2.

AT the Aſſizes a Point was reſerved, and referred to Lord Chief Juſtice *Lee*, then one of the Judges of the King's Bench, for his Opinion upon the Matter in Law, the Chief Juſtice deſired the Opinion of the Court of Common Pleas, out of which the Cauſe iſſued; the Court were of Opinion for the Defendants, and ordered the *Poſtea* to be delivered to their Attorney.

Philips, Qui tam, *againſt* Scullard. Eaſter 6 Geo. 2.

AN Action brought for 50 *l.* Penalty for ſelling Half a Pint of Cherry Brandy. The Fact was proved upon the Trial to be done by Defendant's Wife; but ſeveral Circumſtances appeared to ſhew, that ſhe was unwarily drawn in by falſe Pretences. Lord Chief Juſtice *Eyre*, who tried the Cauſe, directed the Jury to find for Plaintiff, but they found for Defendant contrary to Evidence. *Belſield* moved for a new Trial, and a Rule *Niſi cauſa* was granted, but was afterwards diſcharged upon ſhewing Cauſe; the Action being hard, and the Caſe having been repreſented to the Commiſſioners of Exciſe, who refuſed to direct a Proſecution.

Hemings *againſt* Robinſon. Mich. 6 Geo. 2.

A Point was reſerved at the Sittings of *Niſi Prius*, Whether the Proof of the Indorſor of a Promiſſory Note his Acknowledgment that the Name indorſed on ſaid Note was his Handwriting, be ſufficient to prove the Indorſement in an Action brought by Plaintiff as Indorſee againſt Defendant as Drawer? The Objection was, That no Perſon's Confeſſion but the Defendant's himſelf can be Evidence, and the Indorſor's Hand muſt be proved. The Objection was held good; and the Verdict, as to the ſecond Promiſe in the Declaration, was ordered to be vacated.

Huddleſtone *againſt* Brigſtock and others. Mich. 7 Geo. 2.

TWO Iſſues were joined between the Parties; and upon Trial both Iſſues were found for Plaintiff. Defendant moved for a new Trial; and Mr. Baron *Comyns*, before whom the Cauſe was tried, certified the Verdict as to one of the Iſſues, to be contrary to Evidence; but as to the other Iſſue, certified it to be right. The Court, upon hearing Council on both Sides, were of Opinion that the Verdict could not be ſevered, and being right in Part muſt ſtand. *Baynes* for Defendant; *Darnal* for Plaintiff.

Anonymus.

THIS Cauſe was tried the laſt *Glouceſter* Aſſizes. Defendant moved for a new Trial; and Mr. Juſtice *Page* certified the Damages (which were 50 *l.*) to be exceſſive; but the Action appearing to be brought for a very malicious Proſecution; and Plaintiff having been impriſoned and tried for Felony, the Court were of Opinion that in the Nature of the Thing the Damages appeared to be moderate, and therefore refuſed to grant a new Trial.

Carter *againſt* Uppington.

A Third Perſon made Affidavit, that to his Knowledge *A. B.* was a material Witneſs for Defendant; and thereupon *Darnal* moved to put off the Trial; but the Court refuſed to make any Rule upon this Affidavit, becauſe none but the Party himſelf can ſwear to any Perſon's being a material Witneſs.

Roberts *againſt* Downes, an Attorney. Eaſter 7 Geo. 2.

URLIN moved *Monday May* 13, to put off a Trial which was to be the Day following. Court made a Rule to ſhew Cauſe; but declared that for the future ſuch Motions ought to be made at leaſt two Days before the Day of Trial. *May* 14th, Plaintiff came to ſhew Cauſe upon the Rule made the Day before, why the Trial ſhould not be put off. Defendant had given Notice to ſet off a Debt, and the Witneſs ſworn to be abſent was material, as to that Matter only; the Court were of Opinion, that that being a collateral Defence, and as no Trial had been hitherto put off upon that Account, the Rule muſt be diſcharged. *Wright* for Plaintiff; *Urlin* for Defendant.

Gray *againſt* Halton.

RULE was made for Plaintiff to ſhew Cauſe why a Trial ſhould not be put off upon the Affidavit of Defendant's Wife, that Defendant was gone to Sea; and *A. B.* a material Witneſs, as ſhe believed, with him. Court, upon ſhewing Cauſe, diſcharged the Rule, the Affidavit not being ſufficient. *Darnal* for Plaintiff; *Baynes* for Defendant.

Lord Hillſborough *againſt* Jefferyes, Eſq; Trinity 7 & 8 Geo. 2.

THIS was an Action for a Criminal Converſation with Plaintiff's Wife, and the Damages were laid for 50,000 *l.* Defendant moved for a Trial at Bar, upon an Affidavit that he had upwards of twenty Witneſſes to be examined. Rule made to ſhew Cauſe, which was afterwards made abſolute, Plaintiff having Liberty to examine a Witneſs in an ill State of Health before a Judge in the mean Time, and Defendant conſenting to waive his Privilege of Parliament. *Darnal* for Defendant; *Chapple* for Plaintiff.

Roberts *againſt* Lord Hillſborough.

JUNE 27th, *Birch* moved to put off the Trial, which was to be the next Day. *Darnal*, for Plaintiff, objected that the Motion came too late; to which the Court agreed. No Rule.

Parr *againſt* Seames and others. Mich. 8 Geo. 2.

CHAPPLE moved to ſet aſide Defendants Verdict; the Jurors, upon differing in Opinion, agreed to be determined by huſling Half-pence in a Hat; if the major Part came up Heads, the Verdict was to be for Defendants; but this Matter not appearing upon the Oath of any of the Jurors, but by Affidavit, that two of them had confeſſed the ſame, the Court, upon the firſt Motion, ordered the Entry of final Judgment to be ſtayed for a few Days only, to give Plaintiff an Opportunity to procure Affidavits from ſome of the Jurors; but it afterwards appearing that the Jurors were fearful to make Affidavits whereby to accuſe themſelves, and *Chapple* citing a Caſe in *Salk.* 645, *Dent* againſt the Hundred of *Hertford*, the Court enlarged the Rule upon hearing Council on both Sides 'till next Term. *Comyns* for Plaintiff.

Noble *againſt* Lancaſter.

THIS was an Action of *Trover*, whereto Defendant pleaded *Non Aſſumpſit*; and thereupon Iſſue was joined, and Plaintiff obtained a Verdict. *Belfield* moved for Defendant in Arreſt of Judgment; and the Court made a Rule to ſtay the Entry of final Judgment 'till Cauſe ſhewn by Plaintiff.

Gracewood *againſt* ——.

THE Court ordered Defendant, at Plaintiff's Expence, to give him a Copy of the Articles for *Epſom* Races, and to produce the ſame at the Trial. Defendant was Stakeholder, and Plaintiff, whoſe Horſe won the Guineas or Plate, could not proceed to Trial without the Articles. *Baynes* for Plaintiff; *Eyre* for Defendant.

Letgoe, upon the Demiſe of Wheeler, *againſt* Pitt.

In Ejectment. THIS Cauſe was tried before Lord Chief Juſtice at the Sittings, and a Verdict obtained by Leſſor of Plaintiff. Defendant moved to ſet aſide the Verdict, upon Affidavits that ſome material Witneſſes for him abſented themſelves, and did not appear upon the Trial; and alſo prayed the Chief Juſtice's Certificate, ſuggeſting that the Verdict was contrary to Evidence. Court rejected the Affidavits relating to the Witneſſes abſenting as immaterial. Chief Juſtice certified, that the Premiſes in Queſtion were Copyhold, and both Parties claimed under one *George Cromwell*, who had made two ſeveral Surrenders. Queſtion upon the Trial was, Whether *Cromwell* was *compos mentis* at the Time of the Surrender under which Defendant claimed; that nothing was objected to *Cromwell*'s Inſanity 'till twelve Yeare after ſuch Surrender ?. and that the Chief Juſtice was of Opinion the Strength of the Evidence was with Defendant. Court ordered a new Trial, upon Payment of Coſts. *Eyre* and *Glyde* for Leſſor of Plaintiff; *Chapple* and *Wright* for Defendant.

Baker, on the Demiſe of Brown, *againſt* Petcher.

In Ejectment. UPON the Trial a Verdict paſſed for Defendant, but a new Trial was granted, the Mortgage Deed under which Defendant claimed appearing to be a Counterfeit by the Stamp, the Dye which impreſſed it not being made 'till ſeveral Years after the Date of the Deed. Where Matter of Title is the Diſpute, and Defendant obtains a Verdict, a new Trial is always denied; but this is an extraordinary Caſe where the Revenue is concerned.

Champneys *againſt* Browne. Eaſter 8 Geo. 2.

THREE Adminiſtrators appointed a Receiver who received a Sum of Money for their Uſe, and divided to each Adminiſtrator one third Part; two of the Adminiſtrators afterwards failed: And the Queſtion was upon a Point reſerved at *Niſi prius*, Whether the third Adminiſtrator was liable for the whole Sum, or for his own third Part only to a new Adminiſtrator. *Per Cur':* Defendant is reſponſible for that third Part only which he received, and not for a *Devaſtavit* committed by his Co-Adminiſtrators. If Payment had been made to a wrong Perſon, the Caſe had been otherwiſe; but here the Money was properly paid. Defendant is not concerned how his Co-Adminiſtrators diſpoſe of their Parts; the three are equally entruſted. *Cro. Car.* 312. *Cro. Eliz.* 318. *Bridgm.* 37.

Stratford *againſt* Marſhall.

A Rule was made for Plaintiff to ſhew Cauſe why the Trial ſhould not be reſpited till *Michaelmas* Term next upon Affidavits that a material Witneſs for Defendant was gone to Sea, and was not expected home till *Auguſt* next. *Hawkins* for Defendant. Upon ſhewing Cauſe, *Skinner* for Plaintiff objected, That the Trial ought to be put off no longer than till next Term; and that Defendant might then apply again if his Witneſs ſhould not return before. *Per Cur':* Let the Rule be abſolute, it being ſworn that the Witneſs is not expected to return till *Auguſt* next.

The Trial muſt be put off till *Michaelmas* Term, without farther Motion.

Note; Common Practice *contra*.

Lord St. John *againſt* Abbot. Mich. 9 Geo. 2.

THIS Cauſe was tried at the laſt *Northampton* Aſſizes before Mr. Juſtice *Reeve*; and after the Evidence was ſummed up in the Forenoon, the Jury retired to conſider of their Verdict: Before the Riſing of the Court they came into Court, attended by the Bailiff, to aſk a Queſtion, which was anſwered, and they were ſent back. At the Sitting of the Court in the Afternoon, the Judge was informed, That ſome of the Jurymen (two or three) were in Court; whereupon being aſked by him what they did there, anſwered they could not agree, and were thereupon ſent back to their Fellows; and afterwards a Verdict was brought in for Plaintiff. The Judge did not certify the Verdict to be contrary to Evidence; the Court was of Opinion that this was a Miſbehaviour in the Jury, for which they are finable; but not a ſufficient Cauſe to ſet aſide the Verdict; Plaintiff was not in Fault. If the Jury had eat and drank at their own Expence, that is a Miſbehaviour, for which they are finable, but their Verdict muſt ſtand+; though it is otherwiſe if they had eat and drank at the Expence of either Party. Rule to ſhew Cauſe why Verdict ſhould not be ſet aſide, diſcharged. *Belfield* for Plaintiff; *Birch* for Defendant.

3

+ But Bro. Abr. Verdict pl. 17. & same case in 24. E. 3. 24. seem contra.

Philips *againſt* Fowler. Eaſter 8 Geo. 2.

AFTER a Motion in Arreſt of Judgment, and pending the Conſideration of the Court, it being diſcloſed to Defendant by two of the Jurors, that they and their Fellows being divided in Opinion had determined their Verdict by caſting Lots. Defendant moved to ſet aſide the Verdict upon an Affidavit of the Fact made by the two Jurors; and upon hearing Council on both Sides, the Queſtion was, Whether after a Motion in Arreſt of Judgment, Defendant in this Caſe could move to ſet aſide the Verdict. And the Lord Chief Juſtice, Mr. Juſtice *Denton*, and Mr. Juſtice *Comyns* were of Opinion, that though this Motion ſeems out of Time by the general Rule of Practice, yet, as it is founded upon a Matter diſcloſed to the Defendant after the Motion in Arreſt of Judgment, and is made before Judgment pronounced, the Court muſt receive it; and the Fact, as to the Jurors determining by Chance being undiſputed, the Verdict was ſet aſide. (Mr. Juſtice *Forteſcue*, *contra*.) *Vide* Lord *Fitzwalter*'s Caſe, *Salk*. 647. *Skinner* and others for Defendant; *Chapple* and others for Plaintiff.

Bourne *againſt* Church. Trinity 10 Geo. 2.

SKINNER moved for Defendant the Day before the Day appointed by Notice for Trial to put off the Cauſe by Reaſon of the Abſence of a material Witneſs. The Motion was denied, becauſe by the Courſe of the Court theſe Motions muſt be made at leaſt two Days before the Day of Trial; and becauſe it appeared by the Affidavit whereon the Motion was grounded, that the Witneſs went out of Town after Notice of Trial given, ſo that had the Motion been made in proper Time, it could not have been granted.

Cartlidge *againſt* Eyles, Bart. Hilary 10 Geo. 2.

AT *Niſi prius* Plaintiff had a Verdict; and on a Motion for a new Trial the Court were divided in Opinion; and no Rule being made, Plaintiff was at Liberty to ſign final Judgment. *Chapple* for Plaintiff; *Eyre* for Defendant.

Bud *againſt* Milward.

THIS was an Action for ſcandalous Words; and Defendant moved the Court to reſpite the Trial upon an Affidavit of the Abſence of a material Witneſs. Upon ſhewing Cauſe, it was inſiſted the Affidavit ſhould have proved that the abſent Witneſs was preſent when the Words were ſpoken; and to ſhew that to be the Practice, a Caſe was quoted, *Truby* againſt *Nicholls*, *Trin*. 6 & 7 *Geo*. 2. *Per Cur'*: There is no Reaſon to encourage theſe Actions more than (or indeed ſo much as) Actions for Goods ſold, and the like. The Affidavit is in common Form, which is the ſame in all Caſes; and the Rule to ſhew Cauſe why the Trial ſhould not be reſpited was made abſolute. *Chapple* for Defendant; *Eyre* and *Agar* for Plaintiff.

Willis, an Attorney, *againſt* Bennett. Mich. 11 Geo. 2.

BELFIELD moved for a new Trial after the four Days expired, but before Judgment entered on the Verdict, and obtained a Rule to ſhew Cauſe; but the Court declared, that for the future no ſuch Motion ſhould be received after the four Days, unleſs where the Foundation of the Motion be a Fact not diſcloſed to the Party till after that Time.

Strickland *againſt* Fawcett. Hilary 11 Geo. 2.

A Rule was obtained for a View, which View being had by three Jurors only, as appeared by the Sheriff's Return, although by the Statute ſix are required, Plaintiff oppoſed the Cauſe coming on by Proviſo at the Aſſizes, but did not appear at the Trial, or croſs-examine Defendant's Witneſſes; and being nonſuited moved to ſet aſide the Nonſuit.

Fawcett *againſt* Strickland.

THIS Cauſe was attended with the ſame Circumſtances, and a Verdict being obtained without Defence, Plaintiff moved to ſet aſide the Verdict. On ſhewing Cauſe, it appeared that theſe were Cauſes of great Expence, and many Witneſſes attended at the Aſſizes; a Propoſal being made and agreed to, that on Payment of 50 *l.* Coſts, the Nonſuit and Verdict ſhould be ſet aſide. Court delivered no Opinion. *Eyre* and *Bootle* for *Strickland*; *Parker* for *Fawcett*.

Sellon *againſt* Chamberlayne. Trinity 11 & 12 Geo. 2.

MOVED on *Wedneſday* to put off Trial for *Thurſday.* *Cur'*: We will not receive the Motion; you ſhould have come two Days at leaſt before the Day of Trial; you have had eight Days Notice, and come now too late. *Comyns.*

Vide Title **Damages.**
Vide Title **Evidence.**

Mathews *againſt* Lee. Mich. 12 Geo. 2.

MOTION in Arreſt of Judgment, becauſe upon the Iſſue of *Riens per Deſcent*, the Jury had found that Lands came by Deſcent ſufficient to anſwer the Debt and Damages, and had not ſet out the Value of the Lands deſcended under the Statute *W.* 3. *Agar* for Plaintiff ſaid, it was a Replication at Common Law, and not under the Statute. *Birch* for Defendant. Rule *Niſi* diſcharged.

Martindale *againſt* Shipman. Hil. 12 Geo. 2.

RULE to ſhew Cauſe why Trial ſhould not be put off, diſcharged; the Motion being made the Day before the Day appointed for Trial, which is one Day too late. *Skinner* for Plaintiff; *Eyre* for Defendant.

Baſtard, Adminiſtrator of Baſtard, who was Executor of Baſtard, *againſt* Jutſham. Eaſter 12 Geo. 2.

THIS was an Action of Debt on Bond. Defendant pleaded *Non eſt factum*; whereupon Iſſue was joined, and a Verdict was found for Plaintiff. *Draper* moved in Arreſt of Judgment, and objected that the Action will not lie for the Adminiſtrator of an Executor; there muſt be an Adminiſtration *De bonis*

Teſtatoris non Adminiſtrat' by Executor, Court granted a Rule to ſtay the Entry of Judgment upon the Verdict till farther Order.

Grave *againſt* Cliffe.

THE Words (*And the ſaid Plaintiff likewiſe*) after Iſſue tendered by Defendant, were omitted in the Iſſue delivered; but inſerted in the Record of *Niſi prius*. *Burnett* moved to ſet aſide the Verdict, inſiſting upon this as a material Variance, and had a Rule to ſhew Cauſe. But it appearing that Mr. *Lacy*, Defendant's Council, at the Trial had objected to the Evidence given by Plaintiff in Point of Law, (which is making Defence) though he did not croſs-examine, the Rule was diſcharged. *Comyns* and *Draper* for Plaintiff; *Eyre* and *Burnett* for Defendant.

Lyte *againſt* Rivers. Trin. 13 Geo. 2.

HAYWARD for Defendant offered to move in Arreſt of Judgment *July* 5. But *per Cur'*, the Motion comes too late, Writ of *Habeas Corpora Jur.* was returnable 15 *Trin.* and the Motion in Arreſt of Judgment ought to be made before or upon the Appearance Day of that Return, which was *July* 4.

Lord G——r *againſt* Heath.

THIS was an Action upon the Statute of *Scan. Mag.* for the following Words ſpoken of the Plaintiff, *G-d d-m my Lord G——r, he is a Rogue, and all on his Side are Rogues, if the Mob would ſtand by me I'd drive them all, or lay the Town in Heaps.* The Words were proved upon the Trial, notwithſtanding which the Jury found only 12 *d.* Damages. *Darnal* for Plaintiff moved to ſet aſide the Verdict by Reaſon of the Smallneſs of the Damages; but not being able to produce any Inſtance of a Verdict's being ſet aſide merely for that Reaſon; though for exceſſive Damages Verdicts have been frequently ſet aſide, and in Point of Reaſon there is the ſame Cauſe for ſetting aſide one as the other; yet as the Difference has been always taken, and Practice long ſettled, *per Cur'*, We can make no Rule.

Reynolds *againſt* Simonds.

SKINNER for Defendant moved for a new Trial after the firſt four Days of Term. *Per Cur':* The Application comes too late. We have determined that theſe Motions ſhall never be received after the four Days. No Rule.

Selman *againſt* Courtney. Trinity 13 & 14 Geo. 2.

THIS was an Action of Treſpaſs *Quare clauſum fregit*. Defendant pleaded Not Guilty; and upon the Trial before Mr. Baron *Carter*, Defendant offered to give in Evidence, that the Place in which, *&c.* was the King's Highway; but the Judge refuſed to admit that Evidence to be given, and Plaintiff recovered a Verdict. Defendant moved for a new Trial, and a Rule to ſhew Cauſe was granted, on Payment of Coſts. Upon ſhewing Cauſe, ſeveral Caſes were cited on both Sides. And it being ſaid, that ſome Judges in the Circuit had been of different Opinions with reſpect to this Point, the Court thought it a Matter of ſo much Conſequence, that it was proper to be conſidered by all the Judges. After a Conſultation, the Chief Juſtice declared it to be the Opinion of a great Majority of the Judges, That an Highway ought not to be given in Evidence under the General Iſſue, but ought to be pleaded ſpecially; and the Rule to ſhew Cauſe was diſcharged. *Skinner* and *Prime* for Plaintiff; *Belfield* and *Urlin* for Defendant.

Caſes cited for Plaintiff, *Watſon* againſt *Spark*, 1 *Salk.* 287. *Sid.* 106. *Doct' Placitandi* 197. *Coget*'s Caſe, 8 *C.* 66. *B.* 1 *Inſt.* 303. *B.* 5 *C.* 805. 6 *Mod.* 66.

For Defendant, *James* againſt *Hayward*, *Cro. Car.* 184. *Morſe* againſt *Bennett*, 9 *G. B. R.* 2 *Ventris* 297. and in *Shower*.

Froſt *againſt* Whadcock, alias Avery and others, on the Demiſe of Avery, in Ejectment. Eaſter 14 Geo. 2.

A Rule to ſhew Cauſe, why the Trial ſhould not be at Bar, was founded upon an Affidavit that the Premiſſes in Queſtion were of the yearly Value of 100 *l.* and upwards; and that a ſtrict and careful Examination of the Title would be requiſite. At the Time of ſhewing Cauſe it was alſo alledged on Plaintiff's Behalf, that he had a great number of Witneſſes to examine; and that the Point to be tried was *Compos vel non* in *William Avery*, at the Time of making his Will, under which the Defendant *Whadcock* claims his Right. And on Behalf of Defendant it appeared, that they had ſome ancient and infirm Witneſſes to examine, who could not travel to *Weſtminſter*.

Per Cur': We are not, according to the Courſe of the Court, bound down by the Value of the Premiſſes in Queſtion, which is ſworn to be 100 *l. per ann.* As to ſtrict Examination, it is neceſſary in all Caſes, and is nothing with Reſpect to a Trial at Bar. When a long Cauſe is to be tried, a Judge, upon Notice, will take a Day extraordinary at the Aſſizes, where an Examination of a great Number of Witneſſes is moſt proper, and leaſt Expenſive. There is no Nicety in this Point, or Difficulty, ſo as to require the Attention of the whole Court. Ancient Witneſſes grow weaker every Day, and often are not able to travel to *Weſtminſter*. Let the Rule be diſcharged. Plaintiff prayed Leave to examine an old Witneſs before a Judge, upon Interrogatories: But *per Cur':* That cannot be done without Conſent. A Croſs Examination cannot be ſupplied by Depoſitions. If a Trial at Bar was ordered, it could not be till next *Michaelmas* Term; and before that Time the Aſſizes will be held. *Birch* for Plaintiff; *Willes* for Defendants.

Bond *againſt* Palmer.

BELFIELD for Defendant moved for a new Trial, ſuggeſting the Verdict to be againſt Evidence, and relying upon the Judge's Certificate. *Per Cur':* As the Cauſe was tried before a Judge a Judge of another Court, an Affidavit of what paſſed at the Trial muſt be produced, as a neceſſary Foundation for this Motion.

Day *againſt* Samſon. Trinity 14 & 15 Geo. 2.

UPON ſhewing Cauſe againſt a Rule for putting off a Trial, it was objected to the Affidavit, *ex parte Defendentis*, that it was made by a third Perſon, and not by the Party himſelf; but this was over-ruled by the Court. There may be many Caſes where a third Perſon can ſwear another to be a material Witneſs, and the Defendant himſelf cannot; as where a Factor ſells Goods for his Principal, and employs a Porter to deliver them; the factor knows the Porter to be a material Witneſs, but the Principal does not, *&c.* The Court took another Objection to the Affidavit, which run thus: *That* A. B. *and* C. D. *are material Witneſſes for Defendant in this Cauſe, without whoſe Evidence Defendant cannot ſafely proceed to Trial, as Defendant is adviſed, and verily believes.* The Belief ſeems to go through the Whole, as well as to *A. B.* and *C. D.* being material Witneſſes. As to the other neceſſary Part of the Affidavit (that is) that the Party cannot ſafely make Defence without their Teſtimony, though the former Part (that is) *A. B.* and *C. D.* being material Witneſſes, ought to be poſitively ſworn; Belief, as to it, is not ſufficient; but as to the latter Part it is. Theſe two Requiſites ought not to be coupled, but disjoined. The Court enlarged the Rule that the Affidavit might be amended; which being done, a Rule was made to put off the Trial. *Skinner* for Defendant; *Wynne* for Plaintiff.

Tutton *againſt* Andrews.

THE Sheriff on the Execution of a Writ of Inquiry of Damages, admitted improper Evidence to be given by Defendant, whereby the Damages were leſſened; the Court ordered the Inquiſition to be ſet aſide, and gave Plaintiff Leave to execute a new Writ of Inquiry. A Notion has prevailed, that where Damages are exceſſive, a new Trial, *&c.* may be granted, but not where Damages are leſs than they ought to be, though there is as much Reaſon for a new Trial, *&c.* in the one Caſe as the other. *Burnett* for Plaintiff; *Gapper* for Defendant.

Hankey, Knight, who as well, &c. *againſt* Smith. Hilary 15 Geo. 2.

RULE to ſhew Cauſe why the *Poſtea* ſhould not be amended, by returning the Verdict on the third inſtead of the firſt Count, according to the finding of the Jury, was made abſolute, upon the Report of Mr. Baron *Carter*, before whom the Cauſe was tried. It was ordered, That the Aſſociate do amend the *Poſtea* in Court; that Defendant have four Days after the Amendment to move in Arreſt of Judgment; and that Plaintiff do pay Defendant Coſts of this Application. *Prime* for Plaintiff; *Bootle* for Defendant.

Croſs *againſt* Skipwith, Baronet. Trinity 16 Geo. 2.

AFTER a Common Jury returned in *Middleſex*, and the Cauſe made a *Remanet* by Conſent; at the Sitting after laſt Term, Defendant moved for a Special Jury, offering to take Notice of Trial for the ſecond Sitting within this Term, and obtained a Rule to ſhew Cauſe; which was diſcharged. *Per Cur'*: This has been done between Aſſizes and Aſſizes, but we cannot delay the Plaintiff in this Caſe, without Conſent. Death or other Accidents may happen. *Skinner* and *Eyre* for Plaintiff; *Wynne*, *Ketelbey* and *Hayward* for Defendant.

Fiſher *againſt* Kitchingman. Mich. 16 Geo. 2.

UPON a Point reſerved at the Trial by Mr. Juſtice *Burnett*, the Queſtion was, Whether the *Poſtea* in a former Action, produced by the Aſſociate, was ſufficient Evidence to prove that ſuch former Action was tried, and referred, as alledged in the Declaration in this Action; or whether the *Poſtea* ought not to have been returned to the Court, and an Entry made upon record that a Juror was withdrawn, and a Copy of that Entry given in Evidence? The Court was of Opinion, That according to the Thing alledged, *viz.* that the Cauſe came down to Trial upon an Iſſue joined in this Court, the *Poſtea*, which is a Tranſcript of the Record, and authenticated by the Seal, was ſufficient Evidence; and the Rule to ſhew Cauſe why the Verdict ſhould not be ſet aſide, was diſcharged. *Skinner* and *Bootle* for Plaintiff; *Agar* and *Draper* for Defendant.

Abſolon *againſt* Knight and Barber, in Replevin. Eaſter 16 Geo. 2.

AVOWRY for Rent in Arrear, and Iſſue thereon. Plaintiff had given Notice, with his Plea in Bar, to ſet off a mutual Debt againſt the Rent, and offered to give Evidence of it at laſt *Berks* Aſſizes, before Mr. Juſtice *Deniſon*, who refuſed to admit the ſame. The Queſtion was, Whether ſuch Evidence ought to have been received, or not? And the Court were of Opinion, that ſuch Evidence was properly rejected. This Caſe is neither within the Letter nor the Intention of the Statute. The Iſſue is Special and not general. It is not an Action upon a Perſonal Contract. The Rent ſavours of the Realty, and the Remedy is by Diſtreſs. Replevin is a mixed Action. The Judgment, if for the Avowant, muſt be a Return of the Cattle. To take the Benefit of the Statute, Plaintiff and Defendant muſt plead properly. In Debt on Bond, Defendant cannot ſet off under *Non eſt factum*, or *Solvit ad diem*; but muſt plead ſpecially. Perhaps by Way of ſpecial Plea to the Avowry, Plaintiff might have pleaded a mutual Debt of more than the Rent. There could not have been a Set-off by Defendants under *Non cepit*; nor can there be for Plaintiff under *Riens* in *Arrere*. The Rule to ſtay the Entry of Judgment upon the Verdict for the Avowants, was diſcharged. *Belfield* and *Agar* for Plaintiff; *Skinner* for Avowants.

Proctor, Spinſter, *againſt* Bury. Trinity 16 & 17 Geo. 2.

SPECIAL Action on the Caſe, wherein Plaintiff declares, that ſhe being ſingle and unmarried, Defendant, affirming himſelf to be a ſingle and unmarried, prevailed upon Plaintiff to marry him, when in Truth he had been before married to another Woman, *A. B.* ſtill living, whereby Plaintiff loſt her Chaſtity,

ſtity, &c. And on Trial, Plaintiff recovered 2000 *l.* Damages. Defendant, on Plaintiff's Proſecution, had been convicted of Bigamy, and burnt in the Hand. *Prime* and *Wynne* moved in Arreſt of Jugdment, inſiſting, that this Crime is made Felony by Statute *Jac.* 1. That the Charge in the Declaration plainly amounts to Felony; and that this Action is merged in the Felony. The Court directed the Entry of Judgment upon the Verdict to be ſtayed till further Order.

Richardſon *againſt* Frank and another. Mich. 17 Geo. 2.

PLaintiff's Goods diſtrained were not replevied, but, by Conſent of the Attornies on both Sides, remained in the Diſtrainer's Hands, and without any Writ of *Re. fa. lo.* or Appearance in this Court. Plaintiff declared; Defendants avowed; and after long Special Pleadings, ſome of which terminated in Iſſues joined, and others in Demurrers; and after Trial of the Iſſues at the Aſſizes, and a Verdict for Plaintiff, the Avowants moved to ſet aſide all the Proceedings; and the Rule for that Purpoſe was made abſolute. The Court held the Agreement to be void, a Fraud upon the Revenue and the Officers, and an Abuſe of the Court and the Bar. That they had no Juriſdiction, and conſequently could not give Judgment. *Draper* and *Bootle* for Avowants; *Willes* for Plaintiff.

Mead *againſt* Robinſon.

A Point was reſerved a *Niſi prius*; and by Rule, if the Opinion of the Court ſhould be for Plaintiff, the *Poſtea* was to be delivered to him; if for Defendant, Plaintiff was to pay the Coſts of a Nonſuit. The Court declared the Form of the Rule to be wrong; it ought to be, If the Opinion be for Defendant, that the Verdict be entred for him *ex Aſſenſu Juratorum.* This Method of reſerving Points of Law came in lieu of a Special Verdict, and ought to make a final Determination on each Side in all Caſes, except Ejectment, where the Party may begin again at his Pleaſure.

Hart *againſt* Whitlocke.

AFTER the Cauſe called on, and made a *Remanet* by Conſent, Defendant moved to put off the Trial, by Reaſon of the Abſence of a material Witneſs. It appearing this Witneſs being material was a Matter that did not come to Defendant's Knowledge Time enough to move two Days before the laſt Day appointed for Trial, the Rule was made abſolute to put off the Trial. *Skinner* for Defendant; *Willes* for Plaintiff.

Marlow *againſt* Weekes, in Treſpaſs, for aſſaulting, beating and wounding Plaintiff's Mare. Mich. 17 Geo. 2.

AFTER a Verdict for Plaintiff, Defendant moved in Arreſt of Judgment, objecting, that an Action of Aſſault and Battery is not applicable to a dead Thing, or a brute Beaſt, but to one of the Human Species only. The Objection was now overruled, and the Order *Niſi Cauſa* diſcharged. Aſſault upon a Ship (a dead Thing) bad; but for an Injury to a Beaſt, a Writ in Treſpaſs *Vi & Armis* appears in the Regiſter; the Beating and Wounding are found by the Jury. *Draper* for Defendant; *Wynne* for Plaintiff.

Hall *againſt* Douglas, in Treſpaſs and Aſſault. Trin. 17 & 18 Geo. 2.

AFTER a Verdict for Plaintiff, Defendant moved in Arreſt of Judgment; objecting, that the whole Declaration was a meer Recital, and nothing poſitive was averred, the Word [*Whereas*] being inſerted in the Beginning of the Count; and obtained a Rule *Niſi Cauſa*, which was now diſcharged. The Court were of Opinion, that they ought to get over the old Caſes, and not through this Nicety ſet aſide the Verdict, and defeat Juſtice. The Recital of the Original helps, and the Concluſion of the Declaration *whereby, from whence, by Reaſon whereof* (the true Tranſlation of the Word *unde*), the Plaintiff is endamaged, is an Averment, though not in common Form. Upon a Special

Demurrer, the Declaration would be bad, but after Damages found by Reaſon of the Aſſault, which is the Thing done, the Defect is aided. *Draper* for Plaintiff; *Prime* for Defendant.

Lucas *againſt* Marſh. Mich. 18 Geo. 2.

THIS Action was brought by Plaintiff as Indorſee of a Promiſory Note, and on Trial the Note was produced endorſed by the Drawer, but not ſuperſcribed. And the Queſtion on the Point reſerved was, Whether or no, after the Objection taken, the Indorſement to Plaintiff could be ſupplied in Court. Held *per Cur'*, That the Words, *Pay the Contents*, *&c.* may be put or ſet over the Name endorſed in Court. The Property is transferred by the Endorſement; and where the Endorſement appears to be ſuperſcribed, the Court never inquire when the Superſcription was written. This Determination is in Favour of Juſtice, Honeſty and Trade; and the Practice was ſettled *per Pengelly*, Lord *Raymond* and Lord *Hardwick* at *Niſi Prius*. A Releaſe to make a Man a Witneſs (which is a ſtronger Caſe than this) is conſtantly ſuffered to be executed in Court. No Inconvenience will ariſe by this Practice. In Caſe of a Set-off, where an endorſed Note is ſet off by a Defendant againſt a Plaintiff's Demand, it muſt be proved that the Name of the Indorſor was written before the Plea pleaded. Rule that the *Poſtea* be delivered to Plaintiff. *Skinner* for Plaintiff; *Draper* for Defendant.

Norman *againſt* Beaumont, in Treſpaſs and Aſſault, in Norfolk. Mich. 18 Geo. 2.

RICHARD Geater, ſummoned and returned as a *Niſi prius* Juror, did not attend the Aſſizes; but one *Richard Sheppard*, a Freeholder, who was verbally ſummoned to ſerve as a Juror on the Crown Side, and never had been at the Aſſizes before, did attend both Courts (as he imagined himſelf in Duty bound to do;) when *Richard Geater* was called on the *Niſi prius* Side, *Richard Sheppard* (thinking himſelf called) anſwered, and was ſworn as a Juror. Defendant inſiſted, that the Verdict was null and void, the Trial not having been by twelve, but by eleven Jurors only. Neither Party knew any thing of the Miſtake till after the Trial. It was urged for Plaintiff, that Defendant ought to have challenged *Sheppard*; that after recording the Verdict, no Averment can be admitted againſt the Record. That *Sheppara*'s Place of Abode was different from that of *Geater*, which would have been good Matter of Challenge. And if Defendant could aver againſt the Record, yet the Defect is cured by the Statute 32 *H.* 8. *c.* 30. The Verdict was for Plaintiff, Damages One Shilling; and Lord Chief Juſtice *Lee*, who tried the Cauſe, had certified, to entitle Plaintiff to Coſts. *Per Cur'*: By the Statute 3 *Geo.* 2. all the twelve Jurors ought to be drawn out of the Box, and the Name of *Richard Sheppard* was never put into the Box. The Court are not bound by the Record. Here has been no Trial. This is not Matter of Challenge, nor is the Defect cured by the Statute 32 *H.* 8. The Rule on *Richard Sheppard* to ſhew Cauſe why an Attachment was diſcharged. The Rule to ſhew Cauſe why the Verdict ſhould not be ſet aſide, was made abſolute. *Prime* for Plaintiff; *Bootle* for Defendant; *Leeds* for *Richard Sheppard*.

Wrey *againſt* Thorn. Mich. 18 Geo. 2.

THIS was an Action for breaking and entring Plaintiff's Cloſe, *&c.* Defendant juſtified in Right of a Way. Plaintiff replied *extra Viam*; whereon Iſſue was joined; and a Special Jury and View applied for and granted. The Name of *Henry Luppincott* of *Alverdiſcott*, *in Com' Devon'*, Eſquire, was taken out of the Freeholders Book, and he ſtood as a Juryman, and was returned among the other Jurors, in the Panel annexed to the Writ of *Venire facias*; and was ſummoned, and did attend both on the View and at the Trial. After a Verdict for Plaintiff on the Merits of the Cauſe, Defendant moved to ſet aſide the Verdict, Mr. *Luppincott*'s Chriſtian Name being [*Harry*] and not [*Henry*]; and produced an Affidavit thereon from two Perſons. *Per Cur'*: This Affidavit ought not to be received in a Motion for a new Trial. The Record, and all the Jury Proceſs, are uniform. Mr. *Luppincott* is the real Perſon returned and intended to be a Juror, and there is no Pretence that the Verdict is unjuſt. It is commonly underſtood that *Henry* and *Harry* are the ſame Name; or that *Harry* is the ſame Name as *Henry* corruptly ſpelled. The Rule to ſhew Cauſe why the Verdict ſhould not be ſet aſide, was diſcharged. *Belfield* for Plaintiff; *Huſſey* for Defendant.

Roe *againſt* Doe, in Ejectment, on the Demiſe of Cholmondly and his Wife, for a conſiderable Eſtate in Yorkſhire, late Sir Butler Wentworth's, deceaſed. Hil. 18 Geo. 2.

RULE for Tenants in Poſſeſſion to ſhew Cauſe why Iſſue to be joined ſhould not be tried at Bar next Term. Objected on the Part of Lady *Wentworth* the Landlady, Sir *Butler*'s Widow, That a Trial at Bar cannot be moved for by Plaintiff till after Appearance, and the Time to appear will not expire till four Days after this Term. Two Rules of the Court of King's Bench produced, one by Conſent, the other not by Conſent, except as to *Niſi prius* Coſts, where Trials at Bar had been ordered before Appearance. Rule abſolute for Trial at Bar on 8th *May* next. If Plaintiff's Motion had not been received before Appearance, no Trial at Bar could be appointed till next *Michaelmas* Term. Lady *Wentworth*'s Counſel prayed the Conditional Rule, and to defend for Part; which was granted, and ſix Weeks Time to deſcribe the Part defended for. *Prime & al'* for Leſſors of Plaintiff; *Skinner & al'* for Lady *Wentworth*.

Kemp, qui tam, &c. *againſt* The Hundred of Strafford and Tickhill. Eaſter 18 Geo. 2.

AT *Yorkſhire* Aſſizes a Verdict was taken for Defendants, and a Point reſerved by Rule for the Opinion of the Court. The Rule of *Niſi prius* was made a Rule of Court, on the Motion of Plaintiff's Counſel; which Rule the Court diſcharged as new and unprecedented. Whenever a Point is reſerved, the Verdict muſt always be for the Plaintiff. *Bootle* for Defendant; *Prime* for Plaintiff.

Ruſſell *againſt* Ball, in Aſſumption.

DEfendant paid twenty-five Pounds into Court on the Common Rule; Plaintiff refuſed to accept the Money, proceeded to Trial; and on a full hearing of the Merits, had a Verdict for 25*l.* the exact Sum paid into Court, (in Conſequence whereof Plaintiff, not having recovered more, was, by the Rule, liable to pay Coſts to Defendant:) To avoid which, Plaintiff moved to ſet aſide the Verdict, objecting, that the Cauſe was tried by eleven Jurors only. It appeared that one *John Pearce*, ſummoned on the Jury, did not appear, but his Son of the ſame Name, not qualified, attended the Aſſizes, and when the Father was drawn and called, anſwered for him, and was ſworn on the Jury. Plaintiff alſo objected to the Smallneſs of Damages found. *Per Cur':* Attaint will not lie againſt Jurors for finding too ſmall Damages. Where a Demand is certain, as by Promiſory Note, the Court will ſet aſide a Verdict for too ſmall Damages, but not where the Damages are uncertain, as in this Caſe, for curing a Wound. But the Verdict by eleven Jurors only is no Verdict; it is null and void. Rule abſolute to ſet aſide the Verdict, without Coſts. *Vide Norman* againſt *Beaumont*, *Mich.* 18 *Geo.* 2. *Belſield* for Plaintiff; *Draper* for Defendant.

Stanynought *againſt* Coſins, one, &c. Hilary 19 Geo. 2.

ACTION of Treſpaſs for meſne Profits, brought by the Nominal Plaintiff, the Leſſee in Ejectment, againſt the Tenant in Poſſeſſion, after Judgment by Default againſt the Caſual Ejector, for Want of the Tenant's Appearance. No Poſſeſſion in Plaintiff proved at the Trial; *Poſtea* ſtayed; and Point reſerved. The Queſtion is, What ought to have been proved? *Per Cur':* The Title need not be proved. The Tenant is ſo far privy to the Suit, he has been ſerved with a Declaration, and is thereby concluded as to the Title, though he does not appear. The Judgment muſt be ſuppoſed to be right; if not, Tenant might move to ſet it aſide. After Action brought for meſne Profits, Tenant not having entered into the Common Rule, is not concluded, either as to his own Poſſeſſion, or as to Plaintiff's being in Poſſeſſion at the Time of the Demiſe, which poſſibly might have been laid eighteen Years back, and a Tenant at Will might have been only three Days in Poſſeſſion. Damages ought to be given for no longer Time than Defendant is proved to be in actual Poſſeſſion. Plaintiff's Poſſeſſion ought alſo to be proved, and from that Time only Damages to be recovered.

In Caſe of a Leaſe ſealed on the Land (the old Way) where the Poſſeſſion is vacant, Plaintiff cannot recover for meſne Profits. If Tenant enters into the Rule to confeſs Leaſe, Entry and Ouſter, the Title muſt be proved before the Demiſe laid. Tenant privy and Party is to be bound by what himſelf confeſſes, though in the Rule only, and not at the Trial. Treſpaſs is a poſſeſſory Action, only to be brought by Perſon in Poſſeſſion, and from Time of Poſſeſſion; and though Ejectments are Creatures of the Court, the Action for meſne Profits is like Treſpaſs with a *Continuando*. As Plaintiff did not prove his Poſſeſſion, he ought to have been nonſuited. The *Poſtea* ought to be delivered to Defendant, *&c. prout*. Rule of Aſſizes, 1 *Syderfin* 239. Where Tenant enters into the Common Rule, and the Action for meſne Profits is brought by the Leſſor in Ejectment, Plaintiff's Poſſeſſion muſt be proved; if by the Leſſee, his Entry and Poſſeſſion is confeſſed, and need not be proved. No other Difference in Action brought by Leſſor or Leſſee, (1 *Salk*. 246. wrong.) Tenant concluded as to Entry, when confeſſed, except an Entry to avoid a Fine. *Skinner* for Plaintiff; *Willes* for Defendant.

Love and Appleton *againſt* Jarrett. Eaſter 19 Geo. 2.

DEfendant had Time to plead by a Judge's Order, rejoining *gratis*. Plaintiff delivered a Paper-Book, containing a bad Replication, and an Iſſue joined by Defendant. Defendant's Agent's Clerk received and paid for the Paper-Book; but his Maſter perceiving the Replication to be bad, returned the Book to Plaintiff's Agent, and gave Notice of the Miſtake, notwithſtanding which Plaintiff went on to Trial, and had a Verdict, without Defence. Rule abſolute to ſet aſide the Verdict, with Coſts. *Skinner* for Plaintiff; *Draper* for Defendant.

Goodtitle, on the Demiſe of Symons, Eſquire, *againſt* Clark, in Ejectment. Mich. 20 Geo. 2.

AFTER the Merits of the Cauſe had been determined at the Aſſizes by a Special Jury, after a Trial of twenty Hours, Defendant moved to ſet aſide the Verdict, upon Affidavit that Plaintiff's Shewer at a View, purſuant to a Rule of Court previous to the Trial, had miſbehaved himſelf, by telling the Viewers, *This Place is called* Abrahall's Yat, *and this* Conygree-hill; (which were not the Places in Queſtion;) and ſaying, *Theſe Cottages pay Mr.* Symons 5 *d. or* 6 *d. a-Year Rent.* Defendant inſiſting, that nothing more than the Place in Queſtion, which was one ſingle Cottage, ſhould have been ſhewn to the Viewers. Upon hearing Counſel on both Sides, the Court diſcharged the Rule, being of Opinion, That on a View the Shewers may ſhew Marks, Boundaries, *&c.* to enlighten the Viewers; and may ſay to them, Theſe are the Places which on the Trial we ſhall adapt our Evidence to. The Jury could have no Light from looking at the Cottage only. The Queſtion to be tried was, Whether it ſtood within Mr. *Symons*'s Manor, or not? Had an ancient Man been produced to the Viewers, and he had acquainted them that he had known the Place many Years, and given an Account of the Boundary, *&c.* this would have been improper, becauſe it is giving Evidence before the Trial. *Belfield* for Defendant; *Bootle* and *Eyre* for Plaintiff.

Hicks *againſt* Young in Replevin. Mich. 20 Geo. 2.

PLaintiff did not appear at the Aſſizes, Defendant brought down the Record, and his Counſel inſiſting ſtrongly on a Verdict, Mr. Baron *Reynolds*, before whom the Cauſe was tried, complied, and a Verdict was found for Defendant, though Plaintiff did not appear. Upon Application by Plaintiff to ſet aſide the Verdict, the Court, after hearing the Judge's Report, ordered the *Poſtea* to be amended, and a Nonſuit to be returned inſtead of a Verdict for Defendant; and that Defendant ſhould pay Coſts of the Motion. *Prime* for Plaintiff; *Draper* for Defendant.

Chandler *againſt* The Hundred of Sunning, on the Statute of Hue and Cry. Hilary 22 Geo. 2.

ON a Caſe made on a Point reſerved at the Trial, where a Verdict was found for Plaintiff, ſubject to the Opinion of the Court, Mr. Juſtice *Abney* and Mr. Juſtice *Birch* delivered their Opinions, That though Plaintiff cannot recover the Value of Bank-Notes of which he was robbed, to the Value of 960 *l.* for Want of a ſufficient Deſcription thereof in his Advertiſement in the *London Gazette*, yet he ought to recover for what is ſufficiently deſcribed, (*viz.*) his Watch and Money, Value 10 *l.* the Words of the late Act being to be taken diſtributively. Lord Chief Juſtice and Mr. Juſtice *Burnett* were of Opinion, that nothing can be recovered. The Words of the late Act are, That Plaintiff ſhall not maintain his Action, unleſs he deſcribes the Robbers, *&c.* together with the Goods and Effects of which he was robbed; twenty Days before the Advertiſement are given to the Perſon robbed to recollect a particular Deſcription. The Party robbed ought to diſcover, as well as he can, all the Goods he loſt, to give Light to the Hundred to take the Robbers. The Perſon robbed gets Nothing by the taking; the Publick indeed are benefited. A Perſon robbed of a large Sum of Money, probably cannot farther deſcribe it than that it was in Gold and Silver; but perhaps can deſcribe other particular Things then loſt; which he ought to do. The Deſcription of Bank-Notes by Numbers, Dates and Sums (which in this Caſe were omitted) are highly uſeful for Diſcovery. No two have the ſame Marks. If Plaintiff, at the Time of his Advertiſement, had not known the Numbers, *&c.* but recollected them afterwards, the Action would lie. But on the Trial he acknowledged that he knew them, and they were all particularly entred in his Pocket-Book at the Time of the Advertiſement. The Court being divided, no Judgment could be entred on the Verdict.

Moyſe, Widow, *againſt* Cockſedge. Hilary 22 Geo. 2.

THE Action was Treſpaſs *Vi & Armis* for breaking and entring Plaintiff's Houſe, and taking and carrying away her Goods. Defendant pleaded the General Iſſue, and at the Trial ſhewed, that the Goods were taken as a Diſtreſs for Non-payment of a Poor's Rate (which Plaintiff obſtinately refuſed to pay,) and ſold, and after Payment of the Rate, and deducting 1 *s.* for the Expence of the Diſtreſs and Sale, the Overplus was reſtored to Plaintiff. Defendant went through every Requiſite under the Statute 43 *Eliz.* to ſhew the Regularity of the Diſtreſs and Sale, and the Jury were ready to give a Verdict in his Favour; but at the preſſing Inſtance of Defendant's Counſel, a Verdict was given for Plaintiff, Damages 1 *s.* and the following Point reſerved for the Opinion of the Court, (*viz.*) Whether, as no Proviſion is made by the Statute for retaining the neceſſary Expence of the Diſtreſs and Sale, Defendant could juſtify deducting 1 *s.* for the ſame. Which Point having been argued, the Court, after Conſideration, delivered an unanimous Opinion, That as the Act gives a Right to diſtrain and ſell, all Incidents neceſſary to obtain that Right are included. If the Thing diſtrained cannot be ſold without Expence, ſuch Expence is neceſſary, and given by the Statute. The Jury were to judge of the Reaſonableneſs or Extravagance of the Expence; the Court muſt now take the Expence to be neceſſary and reaſonable. If Defendant could not have juſtified the Expence to be neceſſary, yet an Action of Treſpaſs *Vi & Armis* would not lie for the 1 *s.* retained, but an Action on the Caſe for Money had and received for Plaintiff's Uſe. The *Poſtea* ordered to be delivered to Defendant. The Rule of *Niſi prius* was drawn up in the old Way, *viz.* That if the Court ſhould be of Opinion for Defendant, the Verdict for Plaintiff be ſet aſide, and Plaintiff pay Coſts of a Nonſuit; which is a bad Form: It ſhould be, That Judgment of Nonſuit be entred; otherwiſe Defendant could have no Remedy in Caſe of Plaintiff's Death. *Prime* for Plaintiff; *Draper* for Defendant.

Woeden, on the Demiſe of Long, *againſt* Saunders, Widow and others, in Ejectment. Eaſter 23 Geo. 2.

THE *Venire facias* was awarded by Miſtake, returnable on the Morrow of *Aſcenſion*, inſtead of Eight Days of the *Purification*. Defendants, though their Witneſſes attended the Aſſizes, made no Defence at the Trial, but confeſſed Leaſe, Entry and Ouſter, and ſuffered Plaintiff to take a Verdict, relying on the Miſtake in awarding the *Venire*, returnable at a Day ſubſequent to the Aſſizes, till after which Return, and Default by Jurors, there could be no *Niſi prius*. The Jury Proceſs was made returnable at the proper Days. The Court held the Variance material, on the Authority of two Caſes cited by Plaintiff's Counſel, *Baſtard & al'* againſt *Bartlett*, *Trinity* 3 *Geo.* 2. *Dale* againſt *Holmes*, *Mich.* 4 *Geo.* 2. *in B. R.* Verdict ſet aſide on Payment of Coſts. *Prime* for Defendants; *Draper* and *Wynne* for Plaintiff.

Hawys, one, &c. *againſt* Rix. Mich. 24 Geo. 2.

POINT reſerved at the Trial and argued in the Court was, Whether the *Placita* in the Record, referring to a Time more than a Month after Plaintiff's Bill of Coſts delivered, be ſufficient to ſupport his Action for Fees, *&c.* charged in his Bill? Or that, in Order to ſhew the Commencement of the Suit, Plaintiff ought not to have produced his Attachment of Privilege (the Original Writ) or an examining Copy, the Statute 2 *G.* 2. requiring ſuch Bill to be delivered a Month before Action brought? The Bill was proved to be delivered 25th *September* 1749; the *Placita* was of *Hilary* Term then next, the Term of which Iſſue was joined. The Court were of Opinion, that Plaintiff ought to make out his Caſe by the beſt Evidence the Nature of the Thing will admit. The *Placita* is not concluſive; the Writ may correſpond with it, and yet bear Teſte the firſt Day of *Michaelmas* Term 1749, which is before the Month expired; nor is the *Placita* the beſt Evidence, becauſe Plaintiff might have had the Writ. Judgment for Defendant *Niſi cauſa ante Clauſum Termini*. No Cauſe ſhewn. *Willes* for Plaintiff; *Bootle* for Defendant.

Dobſon *againſt* Stevens. Hilary 24 Geo. 2.

WILLES, for Defendant, moved for a Special Jury, as of Courſe; but before the Rule drawn up, the Secondary doubting, prayed the Direction of the Court; and it appearing that Common Jury Proceſs had been awarded, iſſued and returned, and that the Cauſe ſtands as a *Remanet* in Lord Chief Juſtice's Paper, the Court refuſed to grant a Special Jury. Though in Country Cauſes, between Aſſizes and Aſſizes, the Practice is otherwiſe. *Wynne* for Plaintiff.

Bartlett *againſt* Spooner. Eaſter 24 Geo. 2.

THIS was an Action of Treſpaſs, to which Defendant, by Leave of the Court, had pleaded three Pleas, *viz.* Not guilty, and two ſeveral Juſtifications. On the Trial, Defendant proved his ſecond Plea to the Satisfaction of the Court, and obtained a Verdict on the firſt and ſecond Iſſues; but as to the third Iſſue, no Proof was gone into, nor any Verdict found relating to it. *Belſield*, for Plaintiff, objected, That the Verdict was incomplete, imperfect and uncertain, nothing being found as to a material Fact put in Iſſue; and therefore, as to the third Iſſue, a *Venire facias de novo* ought to be awarded. On ſhewing Cauſe, *Prime*, for Defendant, obſerved, that by the firſt Plea, (Not guilty) the Whole is put in Iſſue; that by the ſecond Plea, the whole Treſpaſs is covered; and therefore the Verdict is compleat. It is found thereby, That Plaintiff has no Cauſe of Action, and the Judge who tried the Cauſe, did not think it needful to go farther. As Plaintiff has no Cauſe of Action, he can have no Damages. Contingent Damages in Caſe of Iſſue and Demurrer, and Iſſue tried before Argument, are not neceſſary to be found at the Trial on Plaintiff's Verdict, but may be afterwards ſupplied, if Judgment for Plaintiff on the Demurrer. *Per Cur':* Here is enough found for that Court to give Judgment upon. No *Venire facias de novo* ought to iſſue. It was not the Buſineſs of Defendant, but of Plaintiff, to have the third Iſſue determined, if he imagined that thereby he might be intitled to Coſts, or any other Advantage. The Rule diſcharged.

N. B. Plaintiff gave no Evidence on the Not guilty.

Britton, who as well, &c. *againſt* Peirce. Mich. 25 Geo. 2.

THIS was an Action brought on the Statute 13 *Eliz.* for ſetting up a fraudulent Judgment, wherein Plaintiff on Trial obtained a Verdict for the Penalty of 45 *l.* beſides which, Corporal Puniſhment, and Impriſonment for ſix Months, are inflicted by the Statute. *Agar*, for Plaintiff, moved, for Leave to compound, purſuant to Statute 18 *Eliz. ch.* 5. But *per Cur':* That Statute extends only to Actions brought by common Informers; this Action is brought by the Party injured. The Defendant is convicted by the Verdict, and after Conviction Leave is never given in any Caſe to compound. No Rule. The Judgment to be entered under the Court's Direction. *Vide Cooke's Entries, fo.* 149.

Jones

Jones, on the Demiſe of Rayner, *againſt* Sandys and others, in Ejectment. Hilary 26 Geo. 2.

POINT reſerved at the Trial, Whether a Bond, in the Condition whereof a Mortgage-Demiſe was contained, ſtamped with a treble Sixpenny Stamp, read in Evidence for Plaintiff, ought to have been admitted, or not, for Want of its being ſtamped with two treble Sixpenny Stamps? It being inſiſted on, by Plaintiff's Counſel, that *per Stat.* 12 *Ann. cap.* 9. *ſect.* 21 & 24. every Indenture, Leaſe or Bond, are ſeparately charged, and conſequently this Inſtrument, being both Bond and Leaſe or Demiſe, ought to have paid twice the treble Sixpenny Duty.

See Dougl. 207.

The Court thought the Act of Parliament darkly penned. The Revenue Acts are generally framed by the Officers concerned in the ſeveral Branches, without being laid before the Attorney or Solicitor General. The Act is ambiguous. It is ſafeſt to follow a long Series of Conſtruction. This is one Bond, of which there is one Execution. A Feoffment, with a Warrant for Livery of Seiſin, Bargain and Sale, operating as a Covenant to ſtand ſeiſed, or (being inrolled) as Leaſe and Releaſe, Demiſe and Redemiſe, Mortgage with a Covenant to pay the Money, conſtantly thought to be ſingly charged only, and the Practice has been conſonant. A different Conſtruction of the Act would make great Confuſion in Purchaſe-Deeds and Settlements, often relating to Freehold, Leaſehold and Copyhold Eſtates in one and the ſame Deed. Every Copyhold Surrender, and every Admittance, ſeem to be charged ſeparately, and yet one Stamp of 2*s.* 3*d.* has been held ſufficient for both Surrender and Admittance; and ſo is the Practice. The Subject's Property, as well as the King's Revenue, is to be protected. If the Deed in Queſtion be not Evidence, it is the ſame Thing as void: For though the Commiſſioners of the Stamp-Duty may (tempted by a large Sum of Money) order a Stamp to be added, yet they are not obliged ſo to do. The proper Time for the Objection was when the Bond was offered in Evidence. 2 *Lord Raymond* 1445. Rule, That the *Poſtea* be delivered to Plaintiff, to ſign Judgment. *Prime* for Plaintiff; *Poole* for Defendants.

See Thrustout on Demise of Dank v. Konier C. B. Trin. 14. & 15. G. 2. amongst Mr. Serj. Hill's MSS. Notes.

Smith

Smith *againſt* Gregg, in Yorkſhire. Eaſter 26 Geo. 2.

THE Record was offered to be entred at laſt Aſſizes, a little out of Time, and Defendant's Attorney, then preſent, had refuſed to conſent that it ſhould be received. On Application by Defendant for Judgment as in Caſe of Nonſuit, the Court refuſed to give Coſts of the Application, but ordered Plaintiff to pay Coſts for not proceeding to Trial, and peremptorily to proceed to Trial at next Aſſizes. *Poole* for Defendant; *Willes* for Plaintiff.

Fitch, qui tam, *againſt* Nunn.

MOTION, *per Draper* for Defendant, for a new Trial, after Verdict for Plaintiff, in an Action upon a Penal Statute, (wherein no Defence was made at the Trial) founded on a Variance between the Iſſue delivered and the Record of *Niſi prius*, the Words following, (*viz. And thereupon the ſaid Plaintiff, by* George Boldero *his Attorney ſaith*), being omitted in the Iſſue delivered, though put into the Record. This was admitted not to be a material Variance affecting the Merits, and in Civil Actions helped by the Statute of Jeofails, but not in an Action on Penal Statute. In Actions brought by Original Writ, the Method is to recite the Writ, and then to Count; here is nothing but Recital, without any Count. By Statute 18 *Eliz.* a particular Method is preſcribed to the Proſecutor; he muſt declare in Perſon, or by Attorney. Plaintiff in this Caſe may, poſſibly, be under twenty-one Years of Age, and, if ſo, cannot ſupport this Action, wherein he cannot declare by his *Prochein Amy*.

The Court, after hearing *Prime pro Quer'*, did not incline to think the Variance material, or to favour the Diſtinction made *per Draper*. But as Plaintiff's Agent had made a Blunder, and the Merits had not been tried, ordered a new Trial, and Coſts to attend the Event.

Holland *againſt* Heron. Trinity 26 & 27 Geo. 2.

THE Sheriffs and Coroners of *London* being intereſted in the Queſtion to be tried, *Agar* for Plaintiff moved, that Defendant might ſhew Cauſe why a Special Jury ſhould not be ſtruck and returned by Elizors to be appointed by the Court. *Per Cur'*: The Special Jury may be moved for of Courſe, after Elizors appointed. The firſt Rule was to ſhew Cauſe why it ſhould not be referred to Prothonotary *Cooke*, to conſider of two fit Perſons to be Elizors, and to report; which Rule being made abſolute, without Oppoſition; and the Prothonotary having named *John Wakelin* and *Eliſha Biſcoe*, the next Rule was to ſhew Cauſe why they ſhould not be appointed Elizors by the Court; which Rule was alſo made abſolute, without Oppoſition.

Whitehill *againſt* Carr. Mich. 27 Geo. 2.

THIS was an Action for Words, to which Defendant, by Leave of the Court, had pleaded four ſeveral Matters, the fourth Plea an Accord and Satisfaction; Plaintiff's Agent delivered an Iſſue, made up a Record, and proceeded to Trial, after Iſſues joined on the three former Pleas, but without replying, or taking any Notice of the fourth Plea. Defence was made, and Plaintiff obtained a Verdict. Defendant moved for a new Trial. It appeared that ſome Evidence had been given on Defendant's Part to make out his Caſe upon the fourth Plea, which fell ſhort of the Fact pleaded, though that Evidence was declared by Mr. Serjeant *Eyre*, before whom the Cauſe was tried, to be improper. Rule, that Plaintiff do either demur, or reply iſſuably to the fourth Plea. If he demurs, that Proceedings be ſtayed till after Argument; if he replies iſſuably, that a new Trial be had at next Aſſizes; and Coſts of former Trial and Motions attend the Event. *Wynne* and *Wilſon* for Defendant; *Prime* and *Draper* for Plaintiff.

Fitch, who as well, &c. *againſt* Nunn.

THIS was an Action brought on one of the Penal Statutes made to preſerve the Game, wherein Defendant obtained a Verdict; Plaintiff moved for a new Trial, and the Judge before whom the Cauſe was tried reported the Verdict to be contrary to Evidence. Notwithſtanding which, the Rule to ſhew Cauſe why a new Trial ſhould not be had, on Payment of Coſts, was diſcharged; becauſe no Inſtance could be ſhewn where in an Action on a Penal Statute, in which a Verdict was found for Defendant, a new Trial had ever been granted. *Willes* and *Agar* for Plaintiff; *Wynne* for Defendant.

Coriſh *againſt* Kennedy.

THE Court upon this Motion (which was to put off a Trial) ſuffered Affidavits to be read, taken before a Vice-Counſel abroad. Such Affidavits are conſtantly received and read at the Counſel-Board. It is not reaſonable to expect that ſuch Sort of Affidavits ſhould be taken before Perſons appointed Commiſſioners. *Poole* for Defendant; *Wynne* for Plaintiff.

Laſſiter *againſt* Harvey. Bull *againſt* the ſame. Trin. 27 & 28 Geo. 2.

AFTER Verdicts obtained by Plaintiffs, the Records of *Niſi prius* and Writs of *Hab. Corpora Jurat'*, were accidentally loſt by Mr. *Jacomb* late Aſſociate of the Home Circuit; Rule for Defendant and *Jacomb* to ſhew Cauſe, why new Records and Writs ſhould not be made out agreeable to the old, and Verdicts returned according to the finding of the Jury, made abſolute on Affidavit of Service, no Cauſe being ſhewn to the contrary. *Wynne* for Plaintiffs.

Armſtrong on the Demiſe of Neve and another *againſt* Woolſey and others, in Ejectment. Hilary 28 Geo. 2.

THE Point or Queſtion reſerved at the Trial, for the Opinion of the Court was, To whoſe Uſe a Fine with Proclamations levied without any Declaration of Uſes ſhould operate? Held *per Cur'*, That where no Uſe is declared, there is no Conſideration; the Fine muſt reſult to the ancient Uſe; it ſufficiently appears in this Caſe, that the ancient Uſe was in the Cognizor. The *Poſtea* ordered to be delivered to the Plaintiff. *Godbolt* 180. *Vaughan* 43. 2 *Cooke* 58. *Beckwith's Caſe*. *Shephard's Touchſtone of common Aſſurances, page* 501. *Wynne* for Plaintiffs; *Poole* for Defendants.

Pendock on the Demiſe of Mackinder *againſt* Mackinder and others, in Ejectment.

(VERDICT for Plaintiff as to a fourth Part of the Premiſſes, ſubject to the Opinion of the Court.) Point reſerved at the Trial and twice argued was, Whether a Perſon convicted of Petit Larceny, and who had undergone the Puniſhment of Whipping, was, or was not a Competent Witneſs to a Will, whereby the Premiſſes in Queſtion were deviſed? The Court held the Perſon convicted not to be a competent Witneſs; Petit Larceny is Felony, 'tis a Crime equal to grand Larceny, if not worſe, becauſe the Temptation is leſs to ſteal little than much, it ſprings from an evil Mind. The *Poſtea* ordered to be delivered to Plaintiff.

Anonimous.

RULE for a View on the Face of the Declaration (which was for obſtructing a Water Courſe) denied; 'tis never granted without an Affidavit in any Caſe, except an Action of Waſte.

Brookes on Demiſe of Mence *againſt* Baldwyn, in Ejectment. Trin. 28 Geo. 2.

UPON Motion for a new Trial, Mr. Baron *Adams*, before whom the Cauſe was tried, reported to the Court, That the Verdict (which was a general Verdict for Plaintiff,) was good in Part and bad in Part, agreeable to Evidence as to Lands in Poſſeſſion of one of Defendant's Tenants, contrary to Evidence as to Lands in Poſſeſſion of another Tenant, 12 *Mod.* 271. *Salk.* 648. 3 *Salk.* 362. were quoted to ſhew that where a Verdict is good in Part it muſt ſtand. Rule that Plaintiff ſhall take Poſſeſſion of that Part of the Premiſſes only, as to which the Judge reported in Favour of the Verdict. *Martin* for Defendant; *Poole* for Plaintiff.

Welch *againſt* Richards Clerk. Hil. 29 Geo. 2.

THIS was an Action of Treſpaſs on the Caſe brought by Plaintiff againſt Defendant for a malicious Proſecution, and Impriſonment of Plaintiff; and Plaintiff thinking it neceſſary not only to have the Inſpection, and a Copy of Defendant's Information, which was taken in Writing by *Buckland Nutcombe Blewett* Eſquire, a Juſtice of the Peace for *Somerſetſhire*, touching Plaintiff's marking a Sheep, with a felonious Intent to ſteal the ſame, being the Property of Defendant, but alſo to have the Original, and alſo the Warrant granted by ſaid Juſtice on ſuch Information, and in Conſequence whereof Plaintiff was apprehended and impriſoned, produced at the Aſſizes on the Trial of this Cauſe, applied to the Court on an Affidavit of the Fact as to Demand and Refuſal; and obtained a Rule for the Juſtice to ſhew Cauſe, why Plaintiff his Council or Attorney ſhould not have Leave to inſpect ſaid Information, and to take a Copy thereof at Plaintiff's Expence; and why the Juſtice ſhould not produce ſuch Information, in order that the ſame might be given in Evidence on the Trial of this Cauſe, at next Aſſizes for ſaid County; and alſo for *Richard Darch* the Conſtable, who executed the Warrant, to ſhew Cauſe, why he ſhould not produce the Warrant, which was granted by ſaid Juſtice for apprehending Plaintiff, in order that ſuch Warrant might be given in Evidence on ſaid Trial. Note; The Plaintiff having had a Copy of the Warrant delivered him by the Conſtable, a Copy thereof was not now moved for.

On ſhewing Cauſe it was inſiſted, that it was going too far, to order the Juſtice and the Conſtable to produce the Information and Warrant (becauſe that implied a perſonal Attendance); and that Copies were ſufficient. On the other ſide it was inſiſted, that in a Caſe of this Nature, Originals muſt neceſſarily be produced on the Trial, and for that Purpoſe the Caſe of *The King* againſt *Smith* in Sir *John Strange's Reports*, Vol. 1. p. 126. was cited.

The Court ordered, That Plaintiff his Council or Attorney have Leave to inſpect the Information, and to take a Copy thereof at Plaintiff's Expence; and that the Juſtice ſhould produce or cauſe to be produced the ſaid original Information, in order that the ſame might be given in Evidence on the Trial of this Cauſe at next Aſſizes for ſaid County; and that the Conſtable ſhould produce or cauſe to be produced the original Warrant, in order that the ſame might be given in Evidence on ſaid Trial. *Poole* for Plaintiff; *Davy* for *Blewett* Eſquire.

Denn on the Demiſe of Lawſon, Eſquire *againſt* Farr and another in Ejectment. Mich. 30 Geo. 2.

AFTER Iſſue joined, and before the Day of *Ni. pri.* one of Defendants died, Plaintiff ſued out a *Ve. fa.* between him and the ſurviving Defendant, and made the *Jurata* at the Foot of the Record of *Ni. pri.* agreeable thereto. Verdict for Plaintiff objected at the Trial, That the Death of the Decaſed Defendant ought to have been ſuggeſted on the Record of *Ni. pri.* and thereupon an Award entred of a *Ve. fa.* between Plaintiff and the ſurviving Defendant; Point reſerved was now argued, and thereupon Plaintiff produced the Roll in Court; whereon the Suggeſtion and Award of the *Ve. fa.* as above were entred, which the Court held to be ſufficient; no Continuances are neceſſary to be inſerted in the Record of *Ni. pri.* Rule that Plaintiff have Leave to enter Judgment on *Poſtea* and that Defendant have Time to bring a Writ of Error 'till the Day after next Seal in *Chancery*. *Prime* and *Hewitt* for Plaintiff; *Martyn* for Defendant.

Fitzpatrick *againſt* Pickering. Eaſter 30 Geo. 2.

AFTER Trial at Sittings in *Middleſex*, and a Verdict for Plaintiff for 1*l*. 8*s*. 9*d*. Defendant (the Damages being under 40*s*.) upon an Affidavit that he was reſident in *Middleſex*, and liable to be ſummoned to the County Court, there moved for Leave to enter a Suggeſtion of that Fact upon Record to prevent Plaintiff from having an Allowance of Coſts, and to entitle Defendant to double Coſts, purſuant to the Statute 23 *Geo*. 2. no Certificate having been granted by Lord Chief Juſtice at the Trial, to prevent Defendant's taking Advantage of that Statute, in Oppoſition to this Motion; no Affidavit denying the Fact contained in Defendant's Affidavit was produced by Plaintiff, but 'twas ſworn that Defendant before Trial offered Plaintiff 2*l*. 2*s*. and Coſts; and 'twas obſerved that Plaintiff had given Evidence only on ſome, not on all the Counts in his Declaration, that he had proved a larger Debt than 40*s*. which had been reduced by a Set-off on Defendant's Part to the Sum recovered, and that if Plaintiff had been nonſuited, he would have been liable to Payment of ſingle Coſts only. The Court held that they were bound by the Finding of the Jury. Rule abſolute for Leave for Defendant to enter the Suggeſtion, Plaintiff may traverſe it if he thinks fit. 1 *Strange* 49.. Affidavit of the Fact the proper Foundation for Leave to enter Suggeſtion. 2 *Strange* 974. 1120. Suggeſtion the proper Method. *Prime* and *Martyn* for Defendant; *Davy* for Plaintiff.

Afterwards the Suggeſtion having been entred; Defendant moved for Jugment thereupon. Rule that unleſs Plaintiff pleads to the Suggeſtion by the firſt Day of next Term it is to be taken for true, and Prothonotary is to allow double Coſts to Defendant according to he Statute.

Harvey *againſt* Adderly. Mich. 31 Geo. 2.

RULE made abſolute giving Leave to Defendant to enter on the Roll a Suggeſtion, that he at the Time of Commencement of the Suit did live and reſide in *Middleſex*, was liable to be ſummoned to the County Court, and that Plaintiff's Cauſe of Action did not exceed the Value of 40*s*. under Statute 23 *Geo*. 2. Plaintiff's Counſel inſiſted that ſaid Statute extends only to

Cauſes of Action accrewing within the Juriſdiction of the County Court. This was not deemed to be a good Objection againſt Leave to enter the Suggeſtion. Plaintiff may traverſe the Suggeſtion if he thinks fit. *Davy* for Defendant; *Stanyford* for Plaintiff.

Balchin *againſt* Clarke.

RULE to arreſt final Judgment after Verdict for Plaintiff diſcharged. The Action was brought for a Forfeiture incurred by an Offence againſt the Turnpike Acts, 26th and 28th King *Goorge* 2d. The Objection was, That the Action was brought in the Informer's Name only, not *Qui tam.* though half the Sum forfeited is given to the Truſtees of the Turnpike, which Objection was over-ruled, the Action being proper in the Informer's Name only. *Vide* Acts above. *Hewitt* forDefendant; *Poole* for Plaintiff.

Harvey *againſt* Adderley. Mich. 31 Geo. 2.

DEfendant ſhew Cauſe why Rule to enter Sugeſtion ſhould not be diſcharged, and Suggeſtion taken off the Roll upon Affidavit, that Plaintiff's Cauſe of Action aroſe in *Eſſex*. *Poole* and *Stanyford* for Plaintiff; *Hewitt* and *Davy* for Defendant. inſiſted that as *Venue* is laid in *Middleſex* by Plaintiff himſelf, he ſhall not afterwards be permitted to ſay that his Cauſe of Action aroſe in *Eſſex*. The Certificate in Statute 23d *George* 2d by the Judge in that Title of Freehold or Bankruptcy came in Queſtion. This Matter not proper to be determined on Motion. Rule diſcharged. Plaintiff have Time till next Term to demur to or traverſe the Suggeſtion.

Croſer *againſt* Thomlinſon in Replevin. Hil. 32 Geo. 2.

A Race-horſe diſtrained for Rent at a Stable on *Barnett* Common, half a Mile diſtant from the Inn, (the Red Lion at *Barnett*, *Middleſex*) the Stable no part of the Inn. Horſe diſtrainable. Judgment (on Caſe made at Trial) for the Avowant. Plaintiff has no Remedy but againſt the Inn-keeper. *Hewitt* for Defendant; *Poole* for Plaintiff.

Parker *againſt* Aſline. Mich. 32 G. 2.

Dickins in the Common Pleas, *York* Summer Aſſizes 1758. before Lord *Mansfield*.

THIS was an Action of Treſpaſs for the meſne Profits of a Houſe in *Sheffield*, and was brought in the Name of the Nominal Plaintiff in Ejectment after Judgment by Default againſt the caſual Ejector.

The Coſts of the Ejectment were alſo inſerted in the Declaration as conſequential Damages of the Treſpaſs complained of.

On the Trial of this Cauſe the Plaintiff gave in Evidence the Judgment in the Ejectment, the Writ of Poſſeſſion, with the Return of Execution upon it, the *Defendant's Occupation of the Premiſſes*, the *Value of them during that Time*, which was proved to be 20 *l.* and the *Coſts of the Ejectment* amounting to 12 *l.* more.

On the Part of the Defendant it was objected, that as the Judgment in the Ejectment was by Default againſt the caſual Ejector, this Action could not be legally maintained in the Name of the Nominal Plaintiff, but ought to have been brought by the Plaintiff's Leſſor. In ſupport of this Objection it was argued, that though the Law allows fictious Proceedings in Ejectment for the trying of Titles; yet in Actions for meſne Profits no ſuch Fiction prevails, but the Suit, the Injury, and the Defendant, are real, and the Action in no reſpect differs from any other Action of Treſpaſs; that this being a poſſeſſory Action, could in no Caſe be maintained, unleſs the Plaintiff's Poſſeſſion was either proved or admitted; and that in the preſent Caſe, as the Plaintiff could not poſſibly prove an actual Entry, there was no

Evidence of his Poſſeſſion that could affect or be received againſt the preſent Defendant; It was admitted that an Action of this kind might be brought in the Name of the Nominal Plaintiff in Ejectment, where the Tenant had appeared and confeſſed Leaſe, Entry and Ouſter; becauſe being thereby a Party to the Record in Ejectment, and having confeſſed the Entry of the Plaintiff, he is eſtopped by that Confeſſion, and by the Judgment againſt him, from controverting afterwards the Plaintiff's Poſſeſſion; but where the Judgment in Ejectment was by Default againſt the Caſual Ejector, there was no ſuch Confeſſion of the Tenant, no Matter of Record to eſtop him, but he was equally at Liberty to deny the Plaintiff's Poſſeſſion, and to put him upon proving it as in any other Action of Treſpaſs, and that having never been a Party to the Judgment in Ejectment, neither that Judgment, nor the Writ of Poſſeſſion upon it (as they were merely between the Nominal Plaintiff and a third Perſon, the Caſual Ejector) was any Concluſion or Evidence againſt the preſent Defendant.

It was therefore inſiſted, that the Action in Queſtion ought to have been brought by the Leſſor of the Plaintiff in his own Name, who might have proved an actual Entry under the Writ of Poſſeſſion, and that, by that Entry the Poſſeſſion he obtained would relate back to the Commencement of his Title, but being brought in the Name of the Nominal Plaintiff, and the Defendant being a Stranger to the Judgment in Ejectment, the Plaintiff had failed of ſupporting his Action. *Vide antea* the Caſe of *Stannynought* and *Coſins*, which was cited *Michaelmas* Term 32 *Geo.* 2. Lord *Mansfield* Chief Juſtice in *Banco Regis*. Having ſtated the Caſe, and that he had reſerved it for his own Opinion at his Chambers; undertaking to procure the Opinion of all the Judges, without Expence or Delay to the Parties; delivered the ſame as follows, (*viz.*) At the Trial it was objected, that this being upon a Judgment by Default in Ejectment, it materially differed from the Caſe of a Verdict where the Tenant had appeared; that though in *Strange* 960, it is ſaid, in ſuch Action for the meſne Profits, the Defendant may controvert the Title, yet both Parts of that Caſe have ſince been contradicted.

A Caſe in *Barnes*'s Notes was cited on the Trial as a Caſe in Point, and ſome Circuit Traditions in Support of it, where it is held, that though the Title need not, yet that the Poſſeſſion muſt be proved. Though I was clearly of Opinion upon Principles againſt the Objection at the Trial without hearing the Council, yet in reſpect to the Authorities cited, and for the ſake of ſettling the Practice in this Proceeding, which ſeems now to be the only Remedy for recovering the Poſſeſſion. I choſe to put it into this Method.

I laid the Queſtion before all the Judges the firſt Day of the Term, who have ſince looked into the Books, and produced many Manuſcript Caſes of Opinions both Ways, which are now of no Conſequence, as all the Judges are unanimous in Opinion, that the Nominal Plaintiff and caſual Ejector are fictious Characters, introduced merely for Form, for the more effectual and expeditious way of trying the Title, to avoid Delays and Intricacies of ſpecial Pleading, they are the mere Creatures of the Leſſor, and the Leſſor and the Tenant are the real ſubſtantial Parties to the Record; as to the Tenant he muſt be ſerved with Notice of the Ejectment, and if he is not, he may ſet aſide the Proceedings, ſo that he cannot loſe the Poſſeſſion without having Notice to uſe Means to defend himſelf.

That there is no material Difference whether the Judgment be by Default, or after a Verdict; in the latter Caſe the Title is tried and found againſt him, in the firſt he confeſſes it by ſaying nothing, and as long as ſuch Judgments ſtand unimpeached they bind the Tenant.

An Action for meſne Profits is conſequential to a Recovery in Ejectment, and may be brought either in the Name of the Leſſor, or Plaintiff in Ejectment, and in both Caſes it is the Action of the Leſſor, whoſe Name ſo ever be uſed, and the Title is admitted ſo long as the Judgment ſtands, yet this Judgment like all others is only concluſive as to the Subject Matter of it, it proves nothing beyond the Time laid in the Demiſe, it proves Nothing as to who *occupied the Premiſſes*, and *during what time* they were occupied, or the *Value of the Profits*, all theſe muſt be proved, (as they were in the preſent Caſe) but ſo long as the Judgment ſtands, it proves the Poſſeſſion of the Nominal Plaintiff during the Term laid in the Ejectment; therefore upon Principles, and that this Point may be ſettled, we are all unanimous in Opinion, that the Plaintiff proved what was ſufficient.

Eggleton *againſt* Seneff, Bail for Curphey. Hilary 6 Geo. 2.

ORIGINAL Action brought in inferior Court againſt Defendant by the Name of *Curphey* removed by *Habeas Corpus* into the Common Pleas, and Bail put in by that Name. Plaintiff declares againſt Defendant by the Name of *Scurphee*, and recovers, and after Judgment brings an Action of Debt on the Recognizance, and ſets out a Recovery againſt *Curphey*; to which Defendant pleads *Nul tiel Record*. Plaintiff replies a Record of a Recovery againſt him by the Name of *Scurffee*. Judgment for Defendant upon *Nul tiel Record*.

Thompſon *againſt* Simmons. Eaſter 6 Geo. 2.

DARNAL moved to ſet aſide the Verdict, the Record of *Niſi prius* differing from the Iſſue-Book delivered, the Defendant's Name being inſerted in the Paper-Book, in joining Iſſue, inſtead of Plaintiff's; but in the Record Plaintiff's Name was inſerted, and the Iſſue properly joined; but two Iſſues being joined, and a general Verdict found for Plaintiff, Court refuſed to make any Rule.

Rye *againſt* Croſſman. Trinity 7 & 8 Geo. 2.

RULE was made to ſhew Cauſe why the Verdict ſhould not be ſet aſide; the *& ſimiliter* being left out in the Iſſue delivered, but inſerted in the Record of *Niſi prius*, it was inſiſted for Plaintiff, that it was amendable; but the Court were of Opinion, that no Statute of *Jeofails* extends to it, that it is a material Variance, and therefore the Rule was made abſolute, Defendant having relied upon the Variance, and made no Defence upon Trial; but by Conſent the Cauſe to be tried the Sitting after Term. *Chapple* and *Eyre* for Plaintiff; *Baynes* for Defendant.

Wreathock, Attorney, *againſt* Bingham. Eaſter 8 Geo. 2.

THIS was an Action brought by the Indorſee upon a promiſſory Note, and in the Iſſue delivered, the Name of the Indorſor was omitted thus (*he the ſaid indorſed*) and not (*he the ſaid A. indorſed*). In the Record of *Niſi prius* the Indorſor's Name was inſerted. Defendant made no Defence upon Trial, but inſiſted that this was a material Variance, and moved to ſet aſide the Verdict, which was ordered on hearing Council on both Sides. *Wright* and *Hawkins* for Defendant; *Eyre* for Plaintiff.

Shorter *againſt* Helbutt. Hilary 9 Geo. 2.

URLIN moved to ſet aſide the Verdict for a Variance between the Declaration and Iſſue delivered, inſiſting upon the Variance as material, and that no Defence was made upon Trial. In the Declaration Plaintiff was called *John John Shorter*, and in the Iſſue delivered to Defendant (a Priſoner in the *Fleet*) Plaintiff was called *John Shorter*. Motion was denied.

Johns

Johns *againſt* Smith. Mich. 10 Geo. 2.

UPON a Motion to ſet aſide the Verdict for a Variance between the Iſſue-Book delivered and the Record of *Niſi prius*, which Variance was, that in the firſt Count in the Iſſue-Book it was alledged that Plaintiff was indebted to Plaintiff, and in the Record of *Niſi prius* the Miſtake was rectified without proper Leave; and it was alledged, that Defendant was indebted to Plaintiff. The Action was Caſe upon ſeveral Promiſes, and the Parties Names were rightly placed in the Remainder of the firſt Count, and in all the other Counts; and the Court held the Variance not to be material to the Point in Iſſue, and therefore refuſed to ſet aſide the Verdict. *Daniel* againſt *Mears* in this Court. *Mich.* 5 *Geo.* 2. *Belſield* for Defendant; *Chapple* for Plaintiff.

Venue and Venire Facias.

Cole *againſt* Gouing. Mich. 6 Geo. 2.

AFFIDAVIT to change a *Venue* was penned, that the Promiſes in the Declaration (if any ſuch were made) were made in *Suſſex*, and not in *London*, &c. held inſufficient, and not agreeable to the common Form, which is, that Plaintiff's Cauſe of Action (if any ſuch he hath) did ariſe, *&c.*

Cowling *againſt* Reynoldſon.

BAYNES moved to change the *Venue* from *London* into the County of the City of *York* upon the common Affidavit. Denied *per Cur'* as unprecedented. He then prayed it might be changed into the County at large (*York*); which was alſo denied *per Cur'*, becauſe that is not the true County where the Cauſe of Action did ariſe.

Herbert

Herbert *againſt* Shawe.

CHAPPLE moved to change the *Venue* from *Cumberland* into *Lancaſhire*, which being a County Palatine, the Motion was denied.

Anger *againſt* Wilkins.

THIS was an Action on the Caſe for ſeveral Sets of ſcandalous Words ſpoken of Plaintiff by Defendant. Plaintiff on the Trial obtained a Verdict, and the Damages were found entire, though ſome of the Words were not actionable. *Belſield* moved for a *Venire facias de novo* on Payment of Coſts, that Plaintiff might ſever his Damages according to an ancient Rule of Court; which was granted by the Court. *Eyre* for Plaintiff.

Hardriſs *againſt* Sandell. Mich. 7 Geo. 2.

A Rule to change the *Venue* diſcharged, Defendant having had Time by a Judge's Order to plead, conſenting to plead an iſſuable Plea, and to take Notice of Trial within Term. *Chapple* for Plaintiff; *Baynes* for Defendant.

Singleton *againſt* Lacey.

A Rule to change the *Venue* diſcharged. Defendant having ſummoned Plaintiff before a Judge for Time to plead, though the Summons was diſcharged, and no Order obtained. *Eyre* for Plaintiff; *Chapple* for Defendant.

Belſhaw *againſt* Porter.

A Rule *Niſi* to change the *Venue* diſcharged, the Words of the Affidavit, whereupon the Rule was made, being that the Action did ariſe in the County of *Bucks*, and not in the County of *Middleſex*, or elſewhere out of the County of *Bucks*, to *Defendant's* *fendant's Knowledge and Belief*, which is not poſitive, and therefore inſufficient. *Skinner* for Plaintiff; *Comyns* for Defendant.

Dent *againſt* Lambert. Hilary 7 Geo. 2.

DEfendant moved to change the *Venue* from *Middleſex* into *Suffolk*. Plaintiff ſhewed for Cauſe, that he was an Attorney of the Court, and therefore had a Right to lay his Action in *Middleſex*; but it appearing that Plaintiff had not declared in Perſon, but by *Nicholas Cotterell* his Attorney, the *Venue* was changed.

Jarratt *againſt* Dawſon. Eaſter 7 Geo. 2.

THE *Venue* was laid in *Yorkſhire* inſtead of *London* by Miſtake of the Agent, contrary to the Inſtructions received from the Country Attorney his Client, as appeared by Affidavit; a Rule had been made in the Treaſury to amend the Declaration, upon hearing the Agents on both Sides, Plaintiff conſenting to give an Imparlance; but the Court diſcharged that Rule, as being without Precedent. Plaintiff after he has made his Election as to laying the *Venue* cannot afterwards change it.

Denton, an Attorney, *againſt* Lambert.

EYRE moved to change the *Venue* from *Middleſex* to *Suffolk* upon the common Affidavit. *Skinner* ſhewed for Cauſe, that Plaintiff who ſues an Attorney has a right to lay his Action in *Middleſex*; and ſo the Court held, though the Action was in Aſſault and Battery.

Welland, an Attorney, *againſt* Frument. Trinity 7 & 8 Geo. 2.

PLaintiff ſued Defendant by *Capias*, and not by Attachment of Privilege, and laid the Action in *Middleſex*. Defendant moved to change the *Venue*; Plaintiff inſiſted, that in Right of his Privilege as an Attorney, the *Venue* ought not to be changed; but Court were of Opinion that Plaintiff having declared as a common Perſon, and not as upon an Attachment of Privilege, the *Venue* muſt be changed. *Wright* for Plaintiff; *Baynes* for Defendant.

Caſtle *againſt* Boucher. Hilary 8 Geo. 2.

SKINNER moved to change the *Venue* from *Middleſex* into *Herefordſhire* in an Action for ſcandalous Words. The Words were not mentioned in the Affidavit, but only that if ſuch Words were ſpoken as in the Declaration, they were ſpoken in *Herefordſhire*, and not in *Middleſex*. Held bad.

Smith *againſt* Haward. Eaſter 8 Geo. 2.

THIS was an Action brought for ſeveral Sets of ſcandalous Words, and the Damages were found entire. Defendant moved in Arreſt of Judgment, the laſt Set of Words, *viz. This Child can hang you*, not being actionable; and upon hearing Council on both Sides, the Judgment was arreſted; but a *Venire facias de novo* was awarded according to an ancient Rule of Court. Vide *Praxis utriuſque Banci*, fol. 22. *Darnal* for Defendant; *Birch* for Plaintiff.

Wood *againſt* Winch.

BIRCH moved the laſt Day of the Term to change the *Venue*. *Per Cur'*: It cannot be now done, as there is not a Day left in the Term for Plaintiff to ſhew Cauſe.

Ward *againſt* Coclough. Trinity 8 & 9 Geo. 2.

RULE to change the *Venue* diſcharged, the Action being brought upon a promiſſory Note. *Skinner* for Plaintiff; *Eyre* for Defendant.

Bickley *againſt* Mackerell.

A Rule was made to change the *Venue* from *Norfolk* into *London*. *Comyns* for Defendant, who quoted Sir *Samuel Gerrard*'s Caſe, *Salk*. 670. to ſhew that a Rule had been made to remove a *Venue* from a County at large into *London*.

Craſter *againſt* Cockerell. Hilary 9 Geo. 2.

URLIN moved to change the *Venue* into *Durham*, or an adjacent County where the Aſſizes are held twice a Year, upon the common Affidavit. The Motion was denied.

Paul *againſt* Young.

HELD upon hearing Council on both Sides, that Defendant cannot regularly move to change the *Venue* after taking out a Judge's Summons for Time to plead. *Wright* for Plaintiff; *Belfield* for Defendant.

Lutwich *againſt* Eames. Eaſter 9 Geo. 2.

EYRE moved to change the *Venue* from the County of *Cumberland* to the City of *London* upon the common Affidavit, and obtained a Rule to ſhew Cauſe, which was afterwards made abſolute. Vide *Bickley* againſt *Mackerell*, *Trin.* 8 & 9 *Geo.* 2.

Spooner *againſt* Milward, *Com' Staff'*.

THE *Venue* in the Declaration was laid at *Leek*, and not at *Leek* in the County aforeſaid. Defendant demurred, and ſhewed the Want of a proper *Venue* for Cauſe. Plaintiff joined in Demurrer; and upon Argument the Court gave Judgment for Plaintiff. It is ſufficient, according to the Courſe of this Court, to lay the *Venue* at *Leek*, which has Reference to the County in the Margent. And ſince by Act of Parliament the *Venire Facias* is *de corpore Comitatûs*, it is not neceſſary that any particular Place in the County be laid. *Belſield* for Plaintiff; *Skinner* for Defendant.

Lutwidge *againſt* Wilcox. Trinity 10 Geo. 2.

On a Policy of Inſurance. CHAPPLE had obtained a Rule to ſhew Cauſe why the *Venue* ſhould not be changed from *Cumberland* to the City of *Briſtol*, or *Somerſetſhire*, (the adjacent County) at Plaintiff's Election. *Bootle* ſhewed for Cauſe, that the Rule was unprecedented, and againſt the Courſe of the Court; for though in an Action on Policy of Inſurance the *Venue* may be changed, yet it cannot be to a City or adjacent County at Plaintiff's Election, which Cauſe was allowed, and the Rule diſcharged.

Lord Griffin *againſt* Buckby.

Action Scandalum Magnatum. WYNNE moved to change the *Venue*. Denied. The *Venue* is never changed in Actions for *Scandalum Magnatum*.

Box *againſt* Read and another.

AFFIDAVIT of one of the Defendants held ſufficient to found a Motion to change the *Venue*.

Cooper *againſt* Mills, an Attorney. Mich. 10 Geo. 2.

DEfendant inſiſted in Right of his Privilege as an Attorney, that the *Venue* ought to be laid in *Middleſex*, his Duty requiring his Attendance at *Weſtminſter*; but *per Cur'*, Defendant hath no ſuch Privilege. Plaintiff may lay his Action where he pleaſes, and if Defendant applies to change the *Venue*, it muſt be upon the uſual Affidavit. *Urlin* for Defendant; *Bootle* for Plaintiff.

Newby *againſt* Burton.

DEfendant having moved to change the *Venue* upon the common Affidavit, it was objected that he had obtained Time from a Judge to perfect his Bail, and therefore the Motion came too late; but the Objection was over-ruled. After an Order for Time to plead, pleading an iſſuable Plea, Defendant cannot move to change the *Venue*; but it has never been held ſo after Time to perfect Bail. *Wright* for Defendant; *Eyre* for Plaintiff.

Rice *againſt* Vinall. Hilary 10 Geo. 2.

THE Declaration was on a promiſory Note and other Counts. Defendant moved on the common Affidavit to change the *Venue*, and obtained a Rule to ſhew Cauſe, which was diſcharged, it appearing by Affidavit that Plaintiff's Cauſe of Action was upon a promiſory Note. *Eyre* for Plaintiff; *Chapple* for Defendant.

Howſe *againſt* Haſelwood.

IN the Margent ſtood the Word *Norfolk*, in the Body of the Declaration the *Venue* was laid at the City of *Norwich* in the County of the ſame City, throughout. Plaintiff executed a Writ of Enquiry of Damages directed to the Sheriffs of the City of *Norwich*. Defendant moved in Arreſt of Judgment, and obtained a Rule to ſhew Cauſe, which was diſcharged. Had no *Venue* been laid in the Body of the Declaration, Reference muſt be had to the Margent; but where a proper *Venue* is laid in the Body of the Declaration, the Word in the Margent ſhall not vitiate it, the County in the Margent will help, but not hurt. *Eyre* and *Comyns* for Plaintiff; *Wright* for Defendant.

Girdler, Serjeant at Law, *againſt* Wathews. Hilary 11 Geo. 2.

For Words. DEfendant moved to change the *Venue* from *Middleſex* into *Staffordſhire* upon the common Affidavit. Plaintiff inſiſted, that in Right of his Privilege the Cauſe ought to be retained in *Middleſex.* Plaintiff had ſued by Original; and therefore the *Venue* was changed. *Parker* for Defendant; *Skinner* and *Comyns* for Plaintiff.

Sheers *againſt* Bartlett.

THE Word *London* was in the Margent, and in the Body of the Declaration the *Venue* was laid at *Oxford;* after Iſſue joined, and Notice given in *London,* Plaintiff moved to amend by making the *Venue* in the Body of the Declaration agreeable to the Margent, which the Court offered to grant upon Payment of Coſts; but Plaintiff not ſubmitting to pay Coſts, the Rule to ſhew Cauſe for the Amendment was diſcharged. Plaintiff will venture to proceed in *Com' Oxon. Skinner* for Plaintiff; *Price* for Defendant.

Sheers *againſt* Bartlett. Trinity 11 & 12 Geo. 2.

LONDON was in the Margent, but in the Body of the Declaration the *Venue* was laid at *Tame* in *Oxfordſhire.* Plaintiff tried his Cauſe in *Oxfordſhire* and obtained a Verdict, and Defendant moved in Arreſt of Judgment, inſiſting that the *Venire Facias* being awarded to the Sheriffs in the Plural Number muſt ſignify the Sheriffs of *London,* and the Court muſt take Judicial Notice that there is but one Sheriff of *Oxfordſhire.* A Rule to ſtay the Entry of Judgment upon the Verdict was made, and afterwards diſcharged upon hearing Council. *Per Cur':* Had there been no proper *Venue* in the Body of the Declaration, the Margent muſt have been reſorted to; but in this Caſe the Margent muſt be rejected; the Word *Sheriffs* for *Sheriff* is amendable; and here the *Venire Facias* is returned by the Sheriff of *Oxfordſhire. Parker* for Defendant; *Skinner* for Plaintiff.

Penrice *againſt* Jackſon.

THE Sheriffs of the City of *Worceſter* had returned to the *Venire Facias* the Names of 24 Jurors only, though 48 at leaſt are required by the Statute 3 *Geo.* 2. The Sheriffs, before the *Habeas Corp' Jurat'* was returned perceiving their Miſtake, returned to it the Names of 48 Jurors, and Plaintiff proceeded to Trial. Defendant made no Defence, but moved to ſet aſide the Verdict. *Per Cur':* Though imperfect returns may be helped by the Statute, yet here the Fault is in the Matter of Fact; the Return of the *Habeas Corp'* muſt be of the ſame Jurors ſummoned on the *Venire Facias*. The Rule to ſet aſide the Verdict was made abſolute. *Parker* for Defendant; *Eyre* and *Skinner* for Plaintiff.

Davies *againſt* Grace, Attorney. Mich. 12 Geo. 2.

MOTION to change the *Venue* from *Middleſex* into *Surry*. Plaintiff inſiſted Defendant ought to pay for a new Bill; but *per Cur'*, it is no more than in other Actions, a new Original is neceſſary in all Caſes. The *Venue* muſt be changed without Coſts. *Kettlebey* for Defendant; *Skinner* for Plaintiff.

Ellis *againſt* Chorke.

RULE to change the *Venue* diſcharged, Defendant having having taken out a Judge's Summons for Time to plead.

Watſon *againſt* Willis.

DRAPER ſhewed Cauſe againſt Rule to change the *Venue*, and ſaid it was on a promiſory Note, and no other Count in the Declaration. *Cur':* It is good Cauſe and ſettled Practice. *Kettelbey* for Defendant.

Thomeur *againſt* Rand. Hilary 12 Geo. 2.

MOTION made the laſt Day of the Term to change the *Venue*, upon Affidavit of Notice, denied, becauſe Plaintiff can have no Opportunity of ſhewing Cauſe.

Note; The Writ was returnable the ſecond Return of the Term, and Declaration delivered *February* 8. ſo that Defendant's Attorney could not procure an Affidavit from his Client in the Country ſo as to move ſooner.

Bryan *againſt* Smith. Eaſter 12 Geo. 2

GAPPER for Defendant moved in Arreſt of Judgment, a Blank for the Return of the *Venire Facias* being left in the Record of *Niſi prius*, and obtained a Rule to ſhew Cauſe, which, on hearing *Draper* for Plaintiff, was diſcharged. It is conſtant Practice to leave a Blank; the Award of the *Venire Facias* is no Part of the Iſſue, and is amendable by the *Venire Facias* itſelf.

Gouthouſe *againſt* Blaxland.

RULE for changing *Venue niſi*, diſcharged, the Defendant having obtained a Judge's Order for Time to plead. (Chief Juſtice abſent.) *Wright* for Plaintiff; *Comyns* for Defendant.

Winter *againſt* South, Attorney. Trinity 13 Geo. 2.

A Rule to change the *Venue* from *Middleſex* into *Surry*, upon the common Affidavit, without Coſts. Vide *Davies* againſt *Grace*, Attorney, *Mich.* 12 *Geo.* 2. *Cooper* againſt *Mills*, Attorney, *Mich.* 10 *Geo.* 2. *Draper* for Plaintiff; *Wright* for Defendant.

Blackſtock *againſt* Payne. Mich. 13 Geo. 2.

RULE to ſhew Cauſe why *Venue* ſhould not be changed. Plaintiff objected, that Defendant had obtained a Judge's Order for an Imparlance, and could not afterwards move to change the *Venue*. But the objection was over-ruled. This is not Matter of Favour (like Time to plead) but of Right; the Judge would not have ordered an Imparlance, if Defendant had not been entitled to it by Law. Rule abſolute. *Skinner* for Plaintiff; *Agar* for Defendant.

Fray *againſt* Smith.

DEfendant moved in Arreſt of Judgment after a Verdict, the *Venire* being awarded Twelve good, *&c.* and a Rule *Niſi* was granted, which was afterwards diſcharged, on ſhewing Cauſe upon an Affidavit that the Words in the *Venire* itſelf were Twelve free and lawful Men; and the Court being of Opinion, that the Word *Good* in the Award of the *Venire* ought to be rejected.

Maugir *againſt* Hinds. Hilary 13 Geo. 2.

RULE to ſhew Cauſe why the *Venue* ſhould not be changed was diſcharged, it appearing that the Cauſe of Action was upon a Bill of Exchange only, and Plaintiff undertaking not to give Evidence upon any other Count in his Declaration, ſave that upon ſaid Bill of Exchange. *Skinner* for Plaintiff; *Agar* for Defendant.

Warden, Attorney, *againſt* Norden.

RULE for changing the *Venue* diſcharged, Plaintiff being an Attorney, and entitled, becauſe of his neceſſary Attendance upon the Court, to lay his Action in *Middleſex*. *Wynne* for Defendant; *Skinner* for Plaintiff.

Stoneham *againſt* Dent.

VENUE changed from *London* to *Middleſex*. *Agar* for Defendant; *Skinner* for Plaintiff.

Clarke

Clarke *againſt* Sheppard. Trinity 13 & 14 Geo. 2.

Plaintiff ſued out a *Venire facias*, whereupon the Common Panel was returned, this Writ and Return were filed, and a Writ of *Habeas Corpora Jur'* was iſſued forth. Plaintiff afterwards obtained a Rule for a Special Jury, as a Matter of Courſe; which Rule was dicharged. After the *Venire facias* and Return filed, the Motion for a Special Jury comes too late. *Belfield* for Defendant; *Skinner* for Plaintiff.

Cook *againſt* Shone and others.

THIS was an Action brought againſt Defendants, Surveyors, *&c.* of *Weſtminſter-Bridge*, for taking away and deſtroying Plaintiff's Timber to the Value of 500*l.* by the Act of Parliament for building the ſaid Bridge, Plaintiff is confined to bring his Action within ſix Months, and to lay it in *Middleſex*; by Miſtake of *Gillman*, Plaintiff's former Attorney, who now abſconds, the Action was laid in *London*, inſtead of *Middleſex*, and the Miſtake was not diſcovered till after Plea pleaded and Iſſue joined; the Fact appeared to be committed on the 22d *Auguſt* 1739, and the Action to be commenced within the ſix Months. Plaintiff now moved for Leave to change the *Venue* from *London* to *Middleſex*; which was ordered, upon Payment of Coſts. If the Amendment could not be made, Plaintiff muſt loſe his Remedy; he is too late to bring a new Action. In an Action upon a Penal Statute, the Court probably would not interpoſe; but in the Caſe of a Remedial Law, the Amendment muſt be made. *Skinner* for Plaintiff; *Prime* for Defendant. 3 *Lev.* 347. *Bearcroft* againſt *The Hundred of Burnham*.

Richardſon *againſt* Walker and others. Trinity 14 & 15 Geo. 2.

A Rule to ſhew Cauſe why the *Venue* ſhould not be changed from *Cumberland* into *Lancaſhire*, was diſcharged. The *Venue* is never changed into a County Palatine. *Bootle* for Plaintiff; *Birch* for Defendant.

Lewis *againſt* Aſkham. Hilary 15 Geo. 2.

AGAR moved to change the *Venue* from *Yorkſhire* into the City of *York*. Denied *per Cur'*.

Dennis *againſt* Fletcher.

RULE to ſhew Cauſe why the *Venue* ſhould not be changed, was diſcharged, becauſe before the Motion there had been a Judge's Summons for Time to plead, and an Attendance thereon, but no Order was produced. *Per Cur'*: It muſt be ſo, as the Practice ſtands at preſent, but ſhall end here. For the future, a Judge's Summons, or Order for Time to plead, ſhall be no Bar to a Motion to change the *Venue*. *Prime* for Plaintiff; *Willes* for Defendant.

Davis *againſt* Jordan. Eaſter 15 Geo. 2.

WILLES, for Defendant, moved to change the *Venue* from *London* into *Kent*, the adjacent County, upon Affidavit that the Cauſe of Action accrued within the City of *Canterbury*. Denied.

Hayward *againſt* Wells. Trinity 16 Geo. 2.

VENUE changed from *London* into *Berks*, though the Motion for the Rule to ſhew Cauſe was not made till the laſt Day of laſt Term, the Writ was returnable the ſecond Return of that Term, and the Declaration delivered ſo late that Defendant could not move it ſooner. *Gapper* for Plaintiff; *Draper* for Defendant.

Rickaby *againſt* Wilſon, Eſquire. Mich. 16 Geo. 2.

THIS Action was brought by Plaintiff, an Inn-keeper at *Appleby* in *Weſtmoreland*, againſt Defendant, one of the Knights of that Shire, for a large Demand for Wine, *&c.* provided at the laſt Election. Defendant moved, upon the Common Affidavit, to change the *Venue* from *Yorkſhire* into *Weſtmoreland* (where the Aſſizes are held but once a Year.) It appeared that one of Plaintiff's Witneſſes was going to *Ireland*, and would not return for two Years; and that Plaintiff's Creditors, of whom he had bought Wine, *&c.* were very preſſing upon him. *Per Cur'*: Upon theſe Occaſions, the Court acts according to Diſcretion, and the general Rules of Juſtice, and the particular Rules of Practice in Being. The Practice is ſettled, that a *Venue* cannot be changed into *Hull*, *Canterbury*, *&c.* becauſe it is not known when an Aſſizes will be held there; nor into the City of *Worceſter* or *Glouceſter*, out of the County at large; becauſe the Aſſizes for the City and for the County at large, are held at the ſame Place. In *Eaſter* or *Trinity* Term the *Venue* may be changed into a City or County, where the Aſſizes are held but once a-Year, as *Briſtol*, *Cumberland*, *&c.* In *Michaelmas* and *Hilary* Term there is no certain Rule, but the Court ſhould change the *Venue* then, if it can be done without manifeſt Inconvenience. This Action is laid in the next County to that where the Cauſe of Action accrued; had it been laid in *Middleſex*, or any diſtant County, the Court probably would not have obliged Defendant to bring his Witneſſes (ſome of whom appeared to be aged and infirm) ſo far; but in this Caſe, it would be Injuſtice to deny Trial at next *Yorkſhire* Aſſies. The Rule to ſhew Cauſe why the *Venue* ſhould not be changed, was diſcharged. *Prime* and *Willes* for Plaintiff; *Skinner* and *Bootle* for Defendant.

Jeremain *againſt* Ridley, in Treſpaſs, for taking and carrying away Goods, a Tranſitory Action. Eaſter 16 Geo. 2.

RULE made to ſhew Cauſe why the *Venue* ſhould not be changed. *Draper* for Defendant.

The

The Duke of Bedford *againſt* Bray. Mich. 17 Geo. 2.

RULE to ſhew Cauſe why the *Venue* ſhould not be changed, was diſcharged, the Declaration containing, *inter alia*, a Count on a Promiſory Note; Plaintiff conſenting, at the Peril of a Nonſuit, to give Evidence on the Promiſory Note. *Prime* for Plaintiff; *Skinner* for Defendant.

Bradley *againſt* Adey. Mich. 18 Geo. 2.

ACTION of Covenant on Deed for Non-payment of Rent for Lands in *Kent*, laid in *Middleſex*. Motion to change the *Venue* denied. If local Defendant will have Advantage, if tranſitory, the *Venue* cannot be changed, the Action being on a Specialty. *Wynne* for Defendant.

Evereſt *againſt* Sanſum, in Caſe, for a Deceit by warranting an unſound Horſe. Hilary 19 Geo. 2.

DEfendant moved to change the *Venue*, on the Common Affidavit. Plaintiff's Counſel inſiſted, that in Actions for Deceit, Eſcape on meſne Proceſs and Cuſtom of the Realm, the *Venue* cannot be changed; and to that Purpoſe quoted 1 *Syderf.* 87. *N*° 3. *Trials per Pais*, (third Edition) *fol.* 90, 91, 92. *Attorney's Practice in the King's Bench*, *fol.* 79. *Hiſtory Com' Pleas*, *fo.* 68. The Court held, that the *Venue* may be changed in all Actions in their Nature tranſitory, except in Caſes of Privilege, Specialty, Promiſory Note or Bill of Exchange. Rule abſolute to change the *Venue*. *Skinner* for Defendant; *Prime* for Plaintiff.

Note; Deceit in Matter of Title to Land is Action on the Caſe. *Vide Fitz-herbert's Natura Brevium.*

Mayor, &c. of the Borough of Leiceſter, *againſt* Green, alias Smith. Special Action on the Caſe. Trinity 19 & 20 Geo. 2.

RULE made abſolute to change the *Venue* from *London* into *Leiceſterſhire*, upon reading the Declaration, without the uſual Affidavit, it appearing, that the Action was brought on a Cuſtom of the Borough of *Leiceſter*, againſt Defendant, for exerciſing the Trade of a Watchmaker within that Borough, not being a Freeman, and not on a Market or Fair Day. *Note*; The Borough of *Leiceſter* is within the County at large. There is a Commiſſion of Gaol-Delivery every Aſſizes for the Borough, but no Commiſſion of *Niſi prius*. *Willes* for Defendant; *Bootle* for Plaintiff.

Litſon *againſt* Cooke. Action on a Promiſory Note, and other Counts. Hilary 21 Geo. 2.

RULE to ſhew Cauſe why the *Venue* ſhould not be changed, diſcharged, Plaintiff undertaking to give Evidence on the Promiſory Note. *Vide Duke of Bedford* againſt *Bray*, *Mich.* 17 *Geo.* 2. *Agar* for Defendant; *Draper* for Plaintiff.

Herbert *againſt* Flower and others, in Trover. Trin. 24 & 25 Geo. 2.

DEfendants, after a Rule to ſhew Cauſe why the *Venue* ſhould not be changed, and before it was made abſolute, put in their Plea. The Court held, That this Plea by Inadvertence is no Waiver of the Rule; gave Defendants Leave to withdraw the Plea, on Payment of Coſts; and made the Rule abſolute to change the *Venue*. *Bootle* for Defendants; *Prime* for Plaintiff.

Hunter *againſt* Gray; Smith *againſt* Gray. Trin 28, Geo. 2.

RULES to ſhew Cauſe, why the Venue ſhould not be changed from *London* into *Eſſex*, diſcharged; Defendant by a Judge's Order for Time to plead, having conſented to rejoin *gratis*, and take Notice of Trial at the Sitting after this Term in *London*; though the having obtained an Order for Time to plead, generally ſpeaking, is no Hindrance to the Changing of a Venue; yet if Defendant will conſent to take Notice of Trial in the County where the Action is originally laid, that Conſent ſhall bind him; had the Judge been informed of the Defendant's Intention to move to change the *Venue*, he would have made his Order without Prejudice to ſuch Motion. *Draper* for Defendant; *Davy* for Plaintiff.

Davies, Widow, *againſt* Parry Eſquire, late Sheriff of Monmouthſhire, for an Eſcape. Hilary 29 Geo. 2.

PLaintiff ſhewed for Cauſe againſt the common Rule for changing the *Venue* from *Middleſex* into *Monmouthſhire* unleſs Cauſe, That Mr. *Chatmayd* who was Under-Sheriff to Defendant, is now Under-Sheriff, and ought not to have any Concern in returning the Jury Proceſs. Rule abſolute to change the *Venue*, but by Conſent the Jury Proceſs to be directed to and returned by the Coroners. *Hayward* for Defendant; *Wilſon* for Plaintiff.

Long, Gent. one of the Attornies, &c. *againſt* Baylies, Dr. in Phyſick. Trinity 32 & 33 Geo. 2.

ON a Motion to charge the *Venue* from *Middleſex* into *Worceſterſhire*, the Action in Right of Plaintiff's Privilege as an Attorney, was retained in *Middleſex*, though the Attachment of Privilege was a common Attachment into *Worceſterſhire*, not a *Teſtat* Attachment out of *Middleſex* into *Worceſterſhire*. *Nares* for Defendant; *Davy* for Plaintiff.

Addenda.

Addenda.

Eaſter Term in the Second Year of the Reign of King *George* the Third.

NOTICE is hereby given, that from and after the laſt Day of this preſent *Eaſter* Term, 1762, no Record or Writ of *Niſi prius* will be received at any Sitting after Term in *Middleſex*, (in his Majeſty's Court of *Common Pleas*,) unleſs the ſame ſhall be delivered to, and entered with the Marſhal, within two Days after the laſt Day of every Term.

And that no Record or Writ of *Niſi prius* will be received at any Sitting after Term in *London*, unleſs the ſame ſhall be delivered to, and entered with the Marſhal, the Day before the Day to which the Sitting in *London* ſhall be adjourned.

Hilary Term, in the Seventh Year of the Reign of King *George* the Third.

NOTICE is hereby given, That from and after the laſt Day of this preſent *Hilary* Term, every Rule to be made for the Sheriff of the County of *Middleſex*, and the Sheriff of *London*, to return Writs, or bring into Court the Body or Bodies of any Defendant or Defendants, will be made for ſuch Sheriff and Sheriffs to return ſuch Writs, and bring into Court the Body or Bodies of ſuch Defendant or Defendants, within four Days next after Service thereof.

Canning *againſt* Davis. Eaſter 9 Geo. 3.

Plaintiff ſued out *Lat'* which was to anſwer the Plaintiff, who ſues as well in this Behalf for the King as for himſelf. Declaration was (the Plaintiff complains, *omitting the Words, who ſues as well*, &c.) and held irregular. In this Caſe the Variance goes to the Demand, Plaintiff may call himſelf Executor, or give himſelf a ſuperfluous Deſcription in the Proceſs, and declare otherwiſe, and that would not hurt, for the Demand is ſtill the ſame, but in this Caſe the very Nature of the Demand is altered; the Proceſs importing a Demand to the King and the Plaintiff, and the Declaration importing a Demand to the Plaintiff only.

Mr. *Aſhurſt*, for Defendant.
Mr. Solicitor General for Plaintiff.

Strange 1232, not neceſſary to deſcribe the Plaintiff as Plaintiff, *qui tam* in the Proceſs.

N. B. The Practice of the *Common Pleas* is now the ſame as ſettled in the *King's Bench*, by the Authority of the foregoing Caſe.

A FEW OMITTED CASES.

Attachment.

Stretch and his Wife *againſt* Wheeler. Eaſter 27 Geo. 2.

RULE for *Richard James*, to ſhew Cauſe why an Attachment of Contempt againſt him ſhould not iſſue for his not attending as a Witneſs on Defendant's Part at laſt *Surrey* Aſſizes, purſuant to *Subpœna* ſerved, and a ſufficient Recompence tendered him, diſcharged. On ſhewing Cauſe it appeared, that, though *Richard James* was reſident at *Lambeth Marſh*, and the Road from thence to *Kingſton* (where the Aſſizes were held) extreamly good, yet he was very weak and infirm, 80 years old, and afflicted with an Aſthma and Dropſy. His Apothecary attended at *Kingſton* ready to make Oath (as now he did) that *Richard James* could not attend the Aſſizes without Danger of his life. The granting of Attachments in theſe Caſes is purely at the Diſcretion of the Court; Defendant may come at *Richard James*'s Evidence by Application here, to have him examined before a Judge upon Interrogatories, or to the Court of *Chancery*, by Bill to perpetuate his Teſtimony. *Prime* for *Richard James*; *Wynne* for Defendant.

Juriſdiction.

Matthews *againſt* Holtam. Mich. 6 Geo. 2.

THIS was an Action of Debt brought for 20 *s.* for a Year's Rent: The Damages were laid 100 *s.* A Motion was made to ſtay the Proceedings, becauſe the Action was beneath the Juriſdiction of the Court; but the Court refuſed to make any Rule, the Damages being laid as before-mentioned.

Downes *againſt* Nichols. Mich. 12 Geo. 2.

BIRCH moved to ſtay Proceedings, for that Plaintiff's Demand was only 6 *s.* 6 *d.* which by Affidavit appeared, but did not produce Declaration. *Cur':* No Rule, becauſe we never try the *Quantum* of Plaintiff's Demand by Affidavit.

Non-proſs, Nonſuit, &c.

Hamp *againſt* Cuming. Eaſter 27 Geo. 2.

RULE to ſhew Cauſe, why Judgment as in Caſe of a Nonſuit diſcharged. Plaintiff had obtained Rules for Special Jury and View, in Purſuance whereof a View was had by four Jurors only; Plaintiff entered his Cauſe for Trial at laſt *Warwick* Aſſiſes, and was ready to proceed, but Defendant refuſing to conſent, the Cauſe could not be tried for want of a View returned by ſix Jurors at leaſt; Plaintiff has affected no Delay, 'twas not his Fault that the View was incompleat. *Prime* for Plaintiff; *Willes* for Defendant.

Notice.

Taylor *againſt* Oxley, in Caſe on Promiſe. Hilary 29 Geo. 2.

JUdgment ſet aſide without Coſts for a Defect in the Notice of Declaration as to the Nature of the Action. The Words of the Notice were [*in an Action upon the Caſe*] generally, without further Addition; the Intent of the general Rule requiring Notice is, that Defendant ſhould know what he was ſued for. Actions on the Caſe on Contracts and for Torts are extreamly various; the Notice ſhould have expreſſed at leaſt on Promiſe, or on ſeveral Undertakings and Promiſes. *Poole* for Defendant; *Willes* for Plaintiff.

Priſoners.

Sherwyn *againſt* Bowes, Spinſter. Eaſter 9 Geo. 2.

AFTER Judgment reverſed by Writ of Error, Defendant had a *Superſedeas*; but before ſhe was thereby diſcharged, ſhe was charged with a new Declaration at Plaintiff's Suit, and upon Application to the Court was diſcharged by Rule from the new Declaration, and her *Superſedeas* was allowed. After her Diſcharge Plaintiff cauſed her to be arreſted and held to Bail for the former Cauſe of Action; whereupon ſhe moved the Court to be again diſcharged by *Superſedeas* upon entering a common Appearance; and upon hearing Council on both Sides, the Court was divided in Opinion. *Lord Chief Juſtice* and Mr. Juſtice *Comyns* looked upon the ſecond Declaration to be no Charge, and that the Court took it ſo when a Rule was formerly made for her Diſcharge; and thereupon ſhe had the Benefit of her *Superſedeas*, and that after the Judgment reverſed and annulled, Plaintiff had a Right, if ſhe thought fit, to bring a new Action. Mr. Juſtice *Denton* and Mr. Juſtice *Forteſcue* were of Opinion, that after the Defendant had been diſcharged by Rule of Court, as to the ſecond Declaration, ſhe ought to be now diſcharged on entering a common Appearance, and that the Rule of Court amounts to the ſame Thing as a *Superſedeas*. No Rule. *Hawkins* for Defendant; *Skinner* for Plaintiff.

Superſedeas.

Roe *againſt* Whitehead. Hilary 17 Geo. 2.

DEfendant, a Priſoner in the *Fleet*, after Judgment brings a Writ of Error, put in Bail thereon, and applied to be diſcharged by *Superſedeas*. Plaintiff's Counſel objected, that if the Writ of Error ſhould be non-proſſed for Want of tranſcribing the Record, the Bail would not be liable. But the Court held, that though the Record ſhould not be tranſcribed, yet the Bail being bound to proſecute the Writ of Error with Effect, will be liable; and made the Rule for a *Superſedeas* abſolute. *Agar* for Defendant; *Bootle* for Plaintiff.

Grub *againſt* Crick. Hilary 19 Geo. 2.

AFTER a *Superſedeas* ordered for Want of Plaintiff's proceeding to Judgment within three Terms after Declaration; and before Defendant could be diſcharged, the ſame Plaintiff cauſed him to be charged with a new Declaration; which the Court held regular, being for a different Cauſe of Action; and the Rule to ſhew Cauſe why a *Superſedeas*, notwithſtanding the Declaration, was diſcharged. *Prime* and *Hayward* for Plaintiff; *Skinner* for Defendant.

Bell *againſt* Simpſon. Trinity 26 & 27 Geo. 2.

DEfendant in Cuſtody for Want of Bail: The *Acetiam* was for 40 *l.* Debt; the Declaration in a Plea that Defendant render to Plaintiff 40 *l.* which, *&c.* The Count ſingle for 22 *l.* Rent, without any additional Count on a *Mutuatus*, or otherwiſe, for the Reſidue of the 40 *l.* Now to prevent a *Superſedeas* (after the ſecond Term from Delivery of Declaration expired) Plaintiff deſired leave to add a ſecond Count, whereby to make his Declaration good from the Delivery, which is a Favour not to be granted. Matters of Amendment are purely at the Diſcretion of the Court. Had Bail been put in, they would have been diſcharged, and ſo muſt Defendant's Perſon be. A Count cannot be added after the ſecond Term. Rule, That if Plaintiff conſents to a *Superſedeas* within ſix Days after Term, he may amend, otherwiſe not. *Willes* for Plaintiff; *Poole* for Defendant.

THE

THE TABLE OF PRINCIPAL MATTERS.

Abatements. Vide **Coſts, Pleadings.**

Serjeant at Law, and Prothonotary's Clerks may plead in Abatement if ſued by Bill inſtead of Original, *Page* 371, 120, 224, 257, 334

See **Bail,** 94
Demurrer, 162
Pleadings, 348, 353, 355, 185, 187

Actions Real.

Proclamation muſt be made 14 Days before the Return of the Summons (on an Iſſue *Ne unques accouple in Loyal Matrimonie,*) 1
The Biſhop muſt return the Fact, and not the Evidence, 1

Affidavit. Vide **Bail, Pleadings.**

Affidavit ſworn in *Ireland* not to be read, *Page* 40
Affidavit for Increaſe of Coſts to be filed, elſe Pleadings irregular, 126

See **Bail,** 100, 102, 91, 87
Inquiry, 235
Inſpection of Court Rolls, &c. 236
Judgments, 267, 272
Outlawry, 322
Pleadings, 348, 185, 187
Double Pleas allowed, 347, 348, 352
D° not allowed, 351
Trial, 447, 448, 452, 466
Venue, 489, 492

Objection to Affidavits *ex parte Defendentis*, that they were ſworn before

before Commiſſioners, who were ſworn to be Clerks or Agents to Defendant's Attorney, over-ruled; *aliter* had they been Agents in this Cauſe, or menial Servants, *Page* 45

See **Ejectment**, 192
Fines and Recoveries, 217

Amendment.

Entry on Record amended by the Writs of *Sci. Fa.* and *Certiorari* after Iſſue joined on Payment of Coſts, 3
Record of *Niſi Prius* amendable by Plea Roll, 4
Sci. Fa. and all Proceedings againſt Bail amended by Record in Original Action, 4
Poſtea amended in a Miſtake of Aſſociate, 6
A Judgment Roll amended by inſerting at the Top of it 15 *Martin*, to prevent its Relation to Eſſoin-Day of firſt Return after Error brought, 7
Judgment Roll refuſed to be amended in the Award of *Venire*, there being nothing to amend by, 7
Judgment Roll amended by ſtriking out *ought* to recover, and inſerting *do* recover, after Error brought and *in nullo eſt erratum* pleaded, and if Defendant proceeds in Error, without Coſts, 7
An Avowry amended in altering a Sum after Demurrer joined and Cauſe in the Paper, on Payment of Coſts, 8
An Avowry refuſed to be amended after Argument on Demurrer, that having been on the Merits, and ſufficient Matter not being ſet forth in the Avowry to amend by, 9
Continuance on Roll amended after Judgment on Demurrer, *Page* 3
Fines amended in Form after Error brought, 216
A Bill againſt an Attorney amended by ſtriking out *producit Sectam*, and inſerting *petit remedium*, on Payment of Coſts, 3
The like Caſe of a Declaration, 11
Declaration on a common *Clauſum fregit* againſt Defendant as Adminiſtrator amended on Payment of Coſts by declaring againſt him as Executor, after Plea pleaded, 5
After Demurrer to a Declaration Plaintiff cannot amend on giving an Imparlance, but may on Payment of Coſts, 6
Declaration amended by changing the *Venue* after Plea pleaded, on Payment of Coſts, 6
Declaration in Prohibition refuſed to be amended, not being warranted by the Suggeſtion or Acts of Spiritual Court, 7
A Demiſe in an Ejectment refuſed to be enlarged without Conſent of Defendant, 8
A Declaration (after Plea Roll filed) refuſed to be amended, the Amendments being ſuch as would deface the Roll, 8
A Declaration amended after Argument on Demurrer, the Form of Pleading only coming in Queſtion on Argument, 9
Bail-piece amended by inſerting the Return of the Writ, 4
Bail-piece amended on a Miſtake of Filazer, 59
Habeas Corpora Jurator' amended in the Return after Trial, 5
The like of a *Jurata* 5
Sheriffs in *Venue* inſtead of Sheriff amendable, 484

Return of *Recordari* refuſed to be amended by adding Pledges, they not appearing to be recorded in the Court below, *Page* 8
An Original Writ and Declaration in *Quare impedit* refuſed to be amended tho' Six Months being paſt, a Lapſe will incur, for here the Writ was according to the Inſtructions, and nothing to amend by, 9, *&c.*
Ca. Sa. amended by the Judgment in a Name after it was executed, 10
A Replication amended by concluding with an Averment inſtead of to the Country, on Payment of Coſts after Judgment for Plaintiff on Demurrer, 5
An Examination on Interrogatories amended by a Re-examination, 10
Interrogatories amended in the Title, 10
A Notice to ſet off refuſed to be amended, 294

See **Coſts,** 138
Prohibition, 428
Superſedeas, 500

Action of Treſpaſs upon the Caſe, the *Jurata* at the Foot of the Record, Treſpaſs only, helped by ſtatute of *Jeofails,* 11
Jurata amended by *Habeas Corpora Juratorum,* and Return of *Venire facias,* 11
Return of *Venire facias,* if defective, within Statutes of Amendment, 11
Declaration amended by rejecting a Word as Supluſage, 11
Declaration amended on Plaintiff's Motion, by changing *Venue* from *London* to *Middleſex,* after Plea pleaded and Iſſue joined, on Payment of Coſts; it being on a Remedial Law, and confined to *Middleſex,* in other Caſes not uſual, *Page* 12, 19, 488
The *Teſte* of a Writ of *Certiorari* amended by Conſent, 12
The Entry of a Writ of *Habeas Corpus* amended, 13
A new Record of *Niſi prius* ordered to be made out, and returned by Aſſociate agreeable to his Minutes taken at the Trial, the old one being loſt, 14
Plea amended after Execution of Writ of Inquiry, on Payment of Coſts, and bringing into Court the Damages found by the Inquiſition, 15
Judge's Order for Amendment of Declaration in the Particulars annexed to the Order ſet aſide, they ought to be inſerted in the Body of it, 15
Writ of Inquiry amended by ſtriking out a Defendant's Name, 15
The Title of a Bill againſt an Attorney amended, 16
The Title of a Declaration in Ejectment not amendable, there being nothing to amend by, 16, 186
Declaration againſt an Attorney amended by inſerting in the Memorandum the true Day of proclaiming, on Payment of Coſts, *&c.* 16
Demiſe in Ejectment refuſed to be amended in Point of Time, without Conſent, 17
The *Teſte* and Return of a Writ of Entry refuſed to be amended, there being no Miſpriſion of the Clerk, nor any thing to amend by, 17
The Title of an Iſſue amended, by inſerting the Word *George,* 18
Amendment (Plaintiff being of Age)

Age) by ſtriking out *Prochein Amie*, who was ſworn to be a material Witneſs, *Page* 18

A Final Judgment on Verdict amended *in particularibus*, after Writ of Error and Record tranſcribed, but the Tranſcript not carried into the King's Bench, 18

Declaration amended, by adding a new Count after the ſecond Term, on Payment of Coſts of Plea and Application, and Defendant having Leave to plead *de novo*, 19

Amendment of Plea, by adding two new ones to thoſe already pleaded by Leave, denied, the Queſtion being Matter of Title, and the Cauſe to be tried at the Sitting after Term, 19

Declaration amended by adding Pledges and a Memorandum making the Declaration agreeable to the Bill on Record, on Payment of Coſts, 20, 356

Recovery amended by ſtriking out [*it is adjudged*] and inſerting [*it is conſidered*], without Rule to ſhew Cauſe, 20, 22

Plea amended, ſo as to ſtate Facts neceſſary to bring the Conſtruction of an Act of Parliament and the true Merits of the Caſe before the Court, after Demurrer to the Plea, Joinder and Argument, and farther Day appointed, on Payment of Coſts, *&c.* 20

Plea amended by leaving out a Special Imparlance, and pleading a Tender as of laſt Term, Declaration having been delivered the laſt Minute, 21

Recovery amended by the Deed of Uſes, by putting the Name of a Vill into its proper Place, 21

Avowry amended after Iſſue joined in the laſt Term, by adding three Avowries for Quit-Rent payable at different Times, on Payment of Coſts, rejoining *gratis*, and taking ſhort Notice of Trial, *Page* 22

Recovery amended in the Prayer of Seiſin, and the Return of the Writ of Seiſin ordered to be perfected by the Clerk of the Return-Office, 23

The Return of a Writ of *Habeas Corpus cum cauſa* amended, by inſerting a Cuſtom, at the Inſtance of the Court that returned it, tho' another Rule touching the Granting of a *Procedendo* was pending, 23

Declaration amended in the Concluſion, from (*and thereof they pray Suit*) to (*pray Remedy*), after Demurrer for that Cauſe, by Conſent, 167

Notice of Set-off cannot be amended, 308

Declaration amended after Iſſue joined, Notice of Trial and Motion for Judgment, as in caſe of a Nonſuit, upon Terms, 317

Poſtea ordered to be amended by the Aſſociate in Court, Plaintiff paying Defendant Coſts of the Application, and Defendant having four Days after Amendment to move in Arreſt of Judgment, 449

Recovery amended by tranſpoſing the Names of Demandant and Tenant, purſuant to the Deed making the Tenant to the *Præcipe*, 24

Bill againſt an Attorney and Declaration thereon, amended by ſtriking out Words, 24

Plea refuſed to be amended, tho' the Application was before Argument; Defendant having likewiſe pleaded another Plea in which

which Iſſue was joined, Trial had, and Verdict for Plaintiff, *Page* 25
Fine amended by Deed of Uſes, adding a Vill, 24
Plea of *Plene Adminiſtravit*, amended on Payment of Coſts, 25
Declaration under peculiar Circumſtances amended on Payment of Coſts and Terms put on Defendants, though Leave to withdraw Declaration, and declare *de novo* refuſed, 25, 26
Bill filed againſt Defendant as an Attorney; amended on Payment of Coſts, 26
Declarations in Actions on Bail Bonds amended as well as any other; but Leave to amend Writs of *Sci. fa.* againſt Bail ſometimes refuſed, where advantage of ſurrendering Principal would thereby be loſt, 26, 27

Arreſt.

Defendant arreſted in returning from Court to juſtify Bail was diſcharged, 27
Attorney taken in Execution whilſt attending. Inquiry diſcharged, 200
C. B. cannot diſcharge Attorney arreſted by Proceſs of *B. R.* in his Return from taxing Coſts, but grant a Rule againſt Officer, 200
Attorney arreſted after attending Summons diſcharged, 378

Antient Demeſne.

See **Pleadings**, 185, 187

Appearance.

See **Proceſs**, 424
Trial, 451

An Appearance cures all Errors and Defects in Proceſs, *Page* 163, 167, 415, 424

Appearance common.

See **Bail**, 87, 96, 100, 102, 105, 101, 108, 109
Outlawry, 321, 324

Arreſt of Judgment.

See **Judgment**, 276, 352
Trial, 450, 452

Attachment. Vide **Habeas Corpus**.

Attachment denied againſt a Perſon for acting as an Attorney before he was ſworn, 27
Attachment granted againſt Attorney for acting after he was forejudged, 29
Aliter if he had no Notice, 41
Attachment denied againſt Attorney for not delivering Writings purſuant to a Judge's Order, no demand having been made ſince Order made a Rule of Court; but a Demand left at the Chambers of Attorney concealing himſelf ſhall be a good Demand, 27
Attachment of Privilege indorſed for Bail without Affidavit of Debt filed is irregular, 30
Attachment ordered againſt an Attorney for inſerting Defendant's Name after ſealed, 31
Attachment for altering a Sheriff's Warrant after ſealed, 199
Attachment denied againſt a Regiſter for not producing a Will, 28

Executor ſhall have Attachment for Non-payment of Coſts, *Page* 28

A Juryman ordered to attend the Court cannot be examined *viva voce*, but muſt make an Affidavit, 29

Attachment againſt Jurors for giving a Verdict by huſtling Halfpence, 32

Attachment lies againſt Bailiffs for Extortion, 32

Attachment denied againſt a Witneſs for not appearing at a Trial, 33

Rule for Attachment againſt Sheriff to ſtand, he refuſing to comply with Terms of Judge's Order, 28

Service of Rule on Under Sheriff ſufficient to ground Attachment againſt Sheriff, 30, 405

So Service on Mr. *Benſon* who acts as Under Sheriff, 30

Attachment againſt Sheriff of *Merionethſhire* for not returning the Writ, 32

Tho' Rule made for Attachment unleſs Payment of Money on Notice, yet on Non-payment you muſt apply to make it abſolute, 29

Attachment of Contempt returnable a Day before Term quaſhed, 31

Where a Rule to do any thing is by Conſent, Parties muſt take Notice of it and comply with it without Service, 31

Defendant being reported in Contempt as to part, Affidavits of the whole Charge may be read, 258

Attachment againſt a Witneſs for not attending to give Evidence after Service with a *Subpœna*, denied, 33

Attachment granted againſt Plaintiff for Non payment to Adminiſtrator of Coſts accrued in Defendant's Inteſtate's Life-time, *Page* 34

Attachment of Contempt againſt High-Bailiff of *Weſtminſter*, for not bringing in the Body of a Priſoner in the *Gatehouſe*, who was charged with a bailable action, diſcharged; the Keeper not giving any Security to the High Bailiff, 34

Attachment of Contempt againſt the Bailiff of a Liberty, for not returning Sheriff's Mandate on an Attachment of Privilege, without any *Mandavi Ballivo* antecedent to the peremptory Rule, 35

The Court in ſome Caſes will grant Attachment againſt Witneſſes for not attending Trials, 35

Rule to ſhew Cauſe why an Attachment ſhould not iſſue againſt one for not attending at Aſſizes as a Witneſs, diſcharged, it appearing he was very old and infirm, 497

Attornies. Vide **Venue, Warrants of Attorney.**

Proceedings by Attorney ſtaid 'till Bill delivered, 36, 123, 243

Writ to excuſe an Attorney not to be diſputed on Affidavits, 37

Attorney in the Country anſwerable for Agent's Miſtakes, 37

Attorney of *K. B.* not to be admitted of this Court without a new Stamp. 38

Attorney may retain Monies of Executor for Buſineſs done for Teſtator, 38

Attorney letting Judgment go, having Orders to plead, not puniſhable if a juſt Debt, 38

Attorney

Attorney cannot appear for Tenant in Poſſeſſion by Order of the Landlord, *Page* 39
A Clerk to *G.* as a Scrivener, tho' alſo an Attorney, not to be admitted, 39
Attorney not to be changed 'till his Coſts paid, 40
Attorney forejudged not to be ſued by Bill, 41
Attorney's Bill for Conveyancing not to be taxed, 41
Attorney to pay Coſts on both Sides for many Blunders in *Capias*, 411
On Attachment of Contempt, Attorney admitted to Bail laſt Day of ſecond Term, 77

See **Coſts**, 358
Notice, 306, 307, 264
Priſoners, 399
Proceſs, 413, 414, 415, 419
Warrants of Attorney, 44

Writ of Privilege to excuſe an Attorney from ſerving in the Trained-Bands of the City, the Service being perſonal, 42
An Attorney who had been, at his own Inſtance, ſtruck out of the Roll, reſtored to his Privilege on Motion, 42
Attornies muſt ſue each other by Bill, not by Proceſs; and that as well where they are of different Courts as of the ſame, 43, 44
An Attorney forejudged muſt be ſued in the common Way by Original; and a ſecond Forejudger obtained pending the firſt, ſet aſide, 43
Attorney of *C. B.* may for a Debt *bona fide*, ſue an Attorney of *B. R.* by Attachment of Privilege, and he ſhall not be intitled to Privilege, 44
Proceedings ſtaid, Plaintiff having been ſtruck off the Roll, and not able to verify a pretended written Authority from another Attorney, *Page* 46
Attorney's Bill that has been paid, not to be taxed; and Rule to ſhew Cauſe clandeſtinely obtained, diſcharged with Coſts, 46
Attorney, Priſoner, commencing an Action on a Bail-Bond aſſigned after his Impriſonment, in an Action begun before it, not within *Stat.* 12 *Geo.* 2. *c.* 13. it being a Continuance of the former Suit, *&c.* 46
Rule on an Attorney to reimburſe the Bail on the Bail-Bond their Debt and Coſts, which they became liable to by his putting in Bail in *B. R.* diſcharged, he not being an Attorney of this Court, nor ever practiſed in it, 47
Rule for an Attorney to ſhew Cauſe why he ſhould not be ſtruck off the Roll, on Complaint that he had impoſed on the Judge who admitted him by falſe Suggeſtions, diſcharged with Coſts, being fully anſwered. 47
Proceedings againſt an Attorney in an Action *Qui tam* commenced by Original, irregular, and ſtaid, 48
Attorney's Bill ordered to be taxed, as between Attorney and Client, 140
Attorney for many groſs Blunders ordered to pay Coſts, 11
The Statute 12 *Geo.* 2. *c.* 13. diſqualifying Attornies who are Priſoners, relates only to proſecuting, and not to defending Suits, 263

Plaintiff an Attorney ſued Defendant an Attorney by *Capias*; Proceedings ſtayed, and Defendant's obtaining Time by Judge's Order to put in Bail, held no Waiver of his Objection, *Page* 53

Leave granted to enter Judgment on an old Warrant of Attorney in *Michaelmas* Term, on Affidavit that Defendant was living in *Ireland* on the 18*th of September* preceding, as a reaſonable Length of Time for the Diſtance, 53, 54

Audita Querela.

See **Judgment,** 277

Awards.

Attachment for Non-performance of a Parol Award granted, 54

Defendant in Cuſtody, Award made he ſhould pay Plaintiff Money at a future Day, Defendant not to be diſcharged 'till Performance, 54

Submiſſion made a Rule of Court on producing one of the Bonds, 55

So on producing an Agreement (made on foot of Bond) not ſigned and made before Execution of Bond, 55

Objections to an Award purſuant to Bond come too late after the firſt Term, 55

Submiſſion to make Award by Writing indented, Award good tho' not indented, 55

Money awarded muſt be paid tho' Party hath a Counterdemand, 56

Award, tho' it don't appear when executed, 56

Coſts taxed by Prothonotary good, tho' he not named, *Page* 56

Award that all Actions are to ceaſe amounts to a Releaſe, 56

See **Coſts,** 58

Matters referred to three, ſo as they, or any two of them, *&c.* Award made by two, the third having ſufficient Notice and not attending, held regular, and their Authority ſufficient, 57

Verdict for Security, Matters referred by Rule, made a Rule of Court, Award for Defendant to pay, *&c.* if Plaintiff elects to proceed upon the Verdict for Non-performance, *&c.* he muſt apply to the Court for Leave, 57

Rule for a ſubſcribing Witneſs to an Arbitration-Bond to ſhew Cauſe why he ſhould not make an Affidavit touching the Execution of the Bond, made abſolute, 55

On Application for Leave to take out Execution for Non-performance of Award, Affidavit of the due Execution of the Award, or of a Demand of the Money, as neceſſary as if Plaintiff had proceeded by Attachment, 58

Award of Coſts, where uncertain, 166

Award of Coſts to be taxed by the proper Officer, held good; and that where ſo generally awarded, the ſworn Officer may aſcertain the *Quantum*, 166

Appearance.

Defendant has eight Days time to appear on a common *Capias*, tho' Demand above 10 *l.* 242, 300

Defendant

Defendant has eight Days excluſive of Return Day to enter Appearance, *Page* 245

Bail.

BAIL on a *Ca. in Withernam*, 59

Defendant held to Bail on Affidavit of Criminal Converſation with Plaintiff's Wife, tho' Affidavit made that Plaintiff's Death was reported, and a Second Marriage had, 61

Special Bail on Affidavit of taking away and ſpoiling Hop Poles, *&c.* to the Damage of 20 *l.* without Judge's Order, 65

Special Bail in Covenant on Affidavit that Plaintiff was damnified 100 *l.* by Defendant's refuſing to dance according to Articles, 67

Whether a Man can be held to Bail for leſs then 20*l.* in a County-Palatine, 69

Two Defendants held to Bail ſeverally on a ſeparate Action, when Affidavit was jointly, irregular, 70

A. ordered to pay *B.* 100 *l.* in a Court in *France*, which Sentence was annulled by the Parliament of *Paris*, *A.* not to be held to Bail here, 73

Defendant ſuperſeded by Surprize, may be arreſted again for the ſame Debt, 71

Plaintiff nonſuited in Debt on Bond may arreſt Defendant in new Action on ſame Bond, 73

Affidavit by Adminiſtrator that Defendant is indebted in 40 *l.* as Plaintiff believes, and as appears by Note. 74

No Bail in an Action of malicious Proſecution, Plaintiff being acquitted on a Flaw in the Indictment, *Page* 76

Otherwiſe for falſe Impriſonment, 76

In Aſſault to the Damage of 500 *l.* Bail ordered, and taken ſeverally in 140 *l.* Verdict 300 *l.* each Bail to pay 140 *l.* 76

No Bail on a Pick-Pocket's Affidavit returned from Tranſportation, 79

In Debt, *Aſſumpſit* and *Trover*, Bail is of Courſe, 79

In Treſpaſs, *Detinue*, and Treſpaſs for *meſne* Profits, at Diſcretion, 79

For Words (under Slander of Title) or a *Qui tam*, or a Fine, Penalty, or Amerciament, no Bail, 79, 80

A. diſcharged on the Fugitive Act not to be held to Bail, 81

Affidavit by Attorney on a Bond that Money appears due, and Acknowledgment of the Debt, ſufficient, 82

Affidavit for Bail taken before Plaintiff's Attorney, good, 60

A Recognizance in the Declaration being variant from the Record, Plaintiff can't have Judgment on *Nul tiel Record*, 60

In Debt on a Recognizance the Writ muſt be ſerved four Days before Return, 62

One Perſon only Bail ſurrenders Defendant, not ſufficient to excuſe Sheriff, 60

Tho' Plaintiff has loſt a Trial, yet Bail may ſurrender, where Plaintiff proceeds againſt Sheriff, 60

Defendant ſurrendered to a wrong Priſon, whereby Plaintiff loſt a Trial, Bail-Bond not to be diſcharged, 64

A Surrender muſt be *ſedente Curia* on the *quarto die poſt* of the Return

of

of the Writ on an Action on a Recognizance, *Page* 66

So on the Second *Sci. Fa.* 75

The particular Hour of Defendant's Surrender to be entered by Filazer, 69

Attorney not to take Bail-piece from Judge's Chambers, but the *Reddidit ſe* to be entered thereon, 68

Defendant ſurrendered by his Bail and *Reddidit ſe* ſigned by a Judge, Bail refuſed to pay the Fees, ſo Defendant went at large: The Entry obtained void, as alſo the Surrender, 68

Bail-Bond on Attachment out of *Chancery*, if not for want of Appearance or Anſwer, bad, 64

On Bail-Bond Proceedings ſtaid, the Plaintiff in the Original Action dying before Judgment could be obtained thereon, 70

Verdict for Plaintiff on Bail-Bond; Leave given to file Bail in the Original Action on Payment of Coſts, and Judgment to ſtand as a Security, 74

Bail-Bond in Country Cauſe not to be put in Suit till eight Days excluſive of Appearance-Day of Return Writ, 77

Proceedings on Bail Bond ſtayed on Terms, and the Bond to ſtand as a Security, tho' Plaintiff had not declared *de bene eſſe*, 81

Held the Bail-Bond ſhould not ſtand as a Security, 84

Bail put in before Arreſt and not excepted againſt in twenty Days, regular after Notice, 81

Bail to the Sheriff being Bail above may be excepted againſt, 63

After an Exception, additional Bail to be perfected and juſtified in four Days at Defendant's Peril, 74

What time Defendant has to juſtify an Exception in Vacation, *Page* 79

Court will give time to rectify a a Miſtake of filing Bail in a wrong Office, 63

Bail-piece omitted to be filed in time by Clerk's Neglect, received, 65

A Bail not to be ſtruck out of Bail-piece, unleſs Affidavit that he is a material Witneſs, 69

Defendant not diſcharged on a common Appearance, tho' Affidavit made of Licence not expired, 63

Bankrupt on producing his Certificate, *&c.* allowed to enter common Appearance, 69

On Defendant's Affidavit that he believed the whole Debt would appear by Indorſement on the Bond to be paid, a common Appearance entered, Plaintiff not producing Bond, 72

Juſtification of Bail at Judge's Chambers not ſufficient, 67

In Affidavit of Juſtification the Word *juſt* muſt not be annexed to Debts, 67

Proceedings againſt Bail pending a Writ of Error ſtaid, 66, 68

Bail muſt be put in on an Action of Debt on a Judgment, tho' Bail before put in on a Writ of Error on that Judgment, 71

Bail in Error liable on a *Non-pros* for want of Tranſcribing, 71

In Debt on Bond for Performance of Covenant, and Error brought, no Bail, 72

On a Writ of Error in Ejectment, Bail may be put in without Plaintiff in Error, 75, 78

Bail in Error on a Bond for Payment of Money mentioned in a Mortgage, and not for Performance of Covenants, 78

Proceedings againſt Bail ſtaid pending

ing a Writ of Error without giving Judgment, *Page* 82

Principal being ſurrendered and charged in Execution, Bail to be diſcharged on Application, 66

Feme-Covert not to be held to Bail when her Huſband not arreſted, 67

Ca. Sa. lodged with Sheriff four Days incluſive before Return, too ſhort, 64

Bail may be put in before Return of the Writ after an Arreſt, but not before an Arreſt without Conſent, 83

Each of the Bail liable to pay the whole Penalty of the Recognizance, if not more than the Sum recovered, 76

See **Judgment,** 277
Outlawry, 322
Priſoners, 393
Scire facias, 96, 207
Superſedeas, 499

Where Proceedings on Bail-Bond are ſtaid, on Conſent that it ſhall ſtand as Plaintiff's Security, it is always intended, and ſhould be expreſſed, that Judgment be given and Execution only ſtaid, 85

Defendant held to Bail in an Action for the Penalty of 100 *l.* for not delivering Goods of 300 *l.* Value, within a certain Time, purſuant to Agreement in Writing, 86

Bail to an Action upon a Judgment; Judgment againſt Defendant, and Writ againſt Bail, before the Return of the Writ, on Motion, Proceedings againſt Bail ſtaid pending a Writ of Error to reverſe the firſt Judgment, they conſenting to give Judgment in the Actions againſt them, *Page* 86

Bail on Reverſal of an Outlawry; Motion by them to have their Recognizance diſcharged, Plaintiff having proceeded to Judgment, though new Original was not filed within two Terms, and Defendant brought Writ of Error, denied, and left to their Plea, 86

Affidavit to hold to Bail made by a third Perſon, muſt be poſitive, except in caſe of an Executor, where Belief is ſufficient, 91, 87

Affidavit that Defendant was indebted if the Ship *Suſſex* was unavoidably loſt, *prima facie* ſufficient, otherwiſe there could be no Bail in Bottomree Bonds; but Affidavits controverting the Fact heard on both Sides, 87

Defendant held to Bail by a Judge's Order, in an Action for meſne Profits after Ejectment, diſcharged by Conſent on common Appearance, the *Acetiam*, by Miſtake, being in Caſe inſtead of Treſpaſs only, 87

Two Days Notice of Juſtification is the general Rule in all Caſes, and denied to be inlarged, for Plaintiff to make farther Inquiry, 88, 101

Exception to Bail muſt be entered in Filazer's Book, or on the Bail-Piece, and Notice of it giving in Writing to Defendant's Attorney, 88, 101

Bail cannot ſurrender the Defendant before the Return of the Writ; but it having been done by Miſtake, he was brought into Court by *Habeas Corpus*, and rendered *de novo*, 88

No Bail in Counties Palatine under 20 *l.* *Page* 89

Where the ſame Bail are put in above as to the Sheriff, and excepted to, taking Aſſignment of the Bail-Bond is not a Waiver of the Exception, 90

Proceedings on Bail-Bond never ſtaid where Plaintiff has been delayed of Trial, but upon Payment of Coſts, and Conſent that Bail-Bond ſhall ſtand as a Security. 91

Delivery of Declaration as *de bene eſſe*, after the Time for putting in Bail is expired, no Waiver of Exception, 92

But the Demand of a Plea is, 92

Bail cannot be put in after final Judgment, 92

Proceedings on a Bail-Bond taken on a *Capias* of this Court, ſet aſide, with Coſts, Plaintiff's Attorney having put it in Suit in *B. R.* 92

How Bail to be put in to ſave the Advantage of pleading in Abatement, 94

In an Action on a Judgment in inferior Court, Bail required here, though Bail was filed in the Original Action below, 94

Infant liable to the Debts of his Wife of full Age, and held to Bail, 95

Proceedings on Bail-Bond ſtaid on Payment of Debt and Coſts, *&c.* 96

Huſband and Wife arreſted, Bail put in for both, and rendered to the *Fleet*, the Wife diſcharged on common Appearance, 96

Where the Caption of Recognizance is in another County, and afterwards inrolled in *Middleſex*, *Scire facias* may be in either County, 96, 207

But where the Caption is in *Middleſex*, *Scire facias* muſt be there alſo, *Page* 96, 207

Filazer makes out the firſt *Scire facias*, Prothonotary the ſecond, 96

Proceedings on Bail-Bond ſtaid, Defendant in Original Action dying before Judgment could be had againſt him, 99

Not ſtaid where there might have been Judgment if he had put in Bail in Time, 99

Wife not diſcharged on a common Appearance, unleſs the Marriage is clearly made out, 100

The producing a Duplicate of Defendant's Diſcharge as a Fugitive held ſufficient to intitle him to a common Appearance, 100, 102, 105

Affidavit by a third Perſon, that Defendant was indebted as appeared by a ſtated Account, inſufficient; but made good by a ſubſequent one of Defendant's acknowledging the Account, 100

Defendant producing his Certificate as a Bankrupt, diſcharged on a common Appearance, 101

Juſtification before a Judge no Juſtification but by Plaintiff's Conſent, 101

The Rule of Court requiring Bail to be perfected within four Days after Exception, intends the next four Days in Term, 101

Bail reſiding in the Country, who had entered into a Recognizance before a Judge in Town, on Exception juſtified by Affidavit, 102

Where Rule upon Sheriff to bring in the Body in ſix Days, Juſtification before a Judge within that Time ſufficient, unleſs Plaintiff excepts, 102

Proceedings on Bail-Bond ſtaid upon Terms, Plaintiff having delayed himſelf, *Page* 103
Leave to enter an *Exoneretur* on the Recognizance, Defendant, pending the Action having become a Bankrupt, and obtained his Certificate, 104
Proceedings ſtaid as againſt one of the Bail, two other having been juſtified in Court after Exception, 104
So as to the other, Proceſs having been ſerved two Days only before the Return, 104
Proceedings on Bail-Bond ſtaid, Defendant in Original Action having become a Bankrupt, and obtained his Certificate, 105
Defendant cannot render himſelf, unleſs Bail perfected in Time, 105
Where delivering Declaration is a Waiver of Exception, *ibid.*
Recognizance is forfeited immediately after a *Ca' ſa* returned, 106
Bail in Action of Debt on Judgment diſcharged, there being Bail in the Original Action, 107
In Covenant, Bail only where Damages can be reduced to a Certainty, 108
So in Action on Bond to ſave harmleſs, Plaintiff muſt ſwear poſitively and certainly how and for how much he is damnified, 109
A new Bail-Piece made out that Bail might ſurrender Defendant, the old one not being to be found on Filazer's File, on Affidavit of Defendant's Agent that it had been allowed and filed, 108
A common Appearance denied, the Matter alledged being improper to be diſcuſſed on a Motion. *Page* 109
The Rule to prevent Sheriffs Officers, and other Perſons concerned in the Execution of Proceſs, from being Bail, extends only to Proceſs of this Court, 99
Seamen diſcharged on common Appearance, being in King's Service; and where ſuch Service continues, though abſent, 95

Bail on Habeas Corpus.

The Rule for Bail is not limited to any particular Time, 90

Bail in Error.

The *Scire facias* on a Recognizance of Bail on a Writ of Error, never ſets forth the Condition of the Recognizance, 93
The Recognizance in Error on Judgment after Verdict in Ejectment, to be taken in the Value of two Years Profits, and double Coſts, 103
No Bail required in Writ of Error brought by Bail on Award of Execution againſt them on a Recognizance in Error, 194
Where Rule for better Bail ſerved in Vacation, Defendant has not Time of Courſe to perfect his Bail till the next Term, but ought to juſtify before a Judge; and Execution ſued out for want of it, held regular, 211

Bail Bond.

See **Bail**, *Page* 85, 90, 91, 92, 96, 99, 103, 105

See **Attornies**, 53
Priſoners, 399, 400

Rule abſolute by Conſent, for delivering up the Bail Bond on entering a common Appearance; Defendant a Member of the laſt Parliament having been arreſted before the Expiration of 40 Days after the Diſſolution, 110

Plaintiff excepted to Bail the Day after *Eaſter* Term, and for want of Juſtification before a Judge, took Aſſignment of, and proceeded on Bail Bond; Defendant juſtified the Bail in Court the firſt Day of next Term, and moved to ſtay Proceedings; which was ordered without Coſts, 110

A Palace Court Officer not admitted to be Bail, and Perſons concerned in executing the Proceſs of all other Courts, as well as this, held to be within the Rule of Court, 110

Defendant after a Judge's Order for Time to perfect Bail put in Bail, and ſurrendered himſelf in Diſcharge of them, without a Juſtification, held regular, and Plaintiff's Proceedings on the Bail Bond ſet aſide, 111

Exception againſt Bail in Vacation, or ſo late in Term that Defendant cannot juſtify within ſuch Term; Defendant has by the Courſe of the Court Time to juſtify till the 4th Day of the next Term incluſive; Juſtification before a Judge in the Interim not neceſſary, and Proceedings on Bail Bond for want of it ſet aſide with Coſts, *Page* 111, 112

Proceedings on Bail Bond not ſtayed where Plaintiff has been delayed, 112

Where Action diſcontinued, and Defendant charged *de novo* for ſame Sum and Cauſe of Action; common Appearance and *Superſedeas* granted, 113

Where Cauſe of Action did not accrue till after Bankruptcy, and the Money was to become due on a Contingency, not within any of the Statutes of Bankrupts; and Defendant muſt be held to Bail, 113

Bail Bonds, Declarations in Actions thereupon amendable, 114

Defendant, *Armourer* on Board a Man of War, diſcharged on entering a common Appearance from Arreſt for a Debt under 20 *l.* as a Seaman under *Stat.* 1 *G.* 2. *c.* 14. 114

After Nonſuit in *B. R.* in a new bailable Action in *C. B.* a common Appearance ordered to be accepted, 115

Affidavit of Debt on a ſingle Sheet made in three Cauſes not applicable to any one; there ſhould be an Affidavit on Stamps in each Cauſe to hold Defendants to Bail; Common Appearances therefore ordered to be accepted, 115

Bail have four Days to juſtify in full Term after Exception in Vacation; Juſtification cannot be in Vacation, but by Conſent, Proceedings on Bail Bond for want of it ſtayed *without* Coſts, *Page* 115

Defendant arreſted by *Capias* in *Kent*, and Bail juſtified; if Plaintiff declares in *London* he loſes his Bail, and after Judgment, if he bring a freſh Action on the Judgment, he ſhall not hold Defendant again to Bail, 116

Where Bail in original Action, none in Debt on Judgment *et è contra*. No Priſoner ſhall be held to Bail in Debt on Judgment in a Cauſe where he has been ſuperſeded by the Rule 1 *G.* 2. *ibid.*

A Plaintiff, tho' convicted of Perjury may make an Affidavit of a Debt ſufficient to hold a Defendant to Bail, tho' he cannot be a Witneſs, 116

Proceedings on Bail Bond ſtayed *without* Coſts, Defendant having ſurrendered before it was put in Suit, 117

Common Appearance ordered to be accepted for want of an *Acetiam* in the *Præcipe* for the Writ left with the Filazer, tho' inſerted in the *Capias ad Reſpondendum* which was indorſed for Bail, 117

Bail Bond muſt be put in Suit only in that Court where original Action brought; and Attorney of *C. B.* by entering into a Bail Bond in an Action in *B. R.* waives his Privilege of being ſued in *C. B.* 117

Bankrupt.

See **Bail**, 101, 104
Money into Court, 350
Double Pleas not allowed, 360
Priſoners, 386

Court is not required by *Stat.* 5 *Geo.* 2. *c.* . to proceed in a ſummary Way as to the Goods of a Bankrupt, though they are as to his Perſon, *Page* 204, 206

See **Coſts**, 145

Baron and Feme.

See **Bail**, 96, 100
Ejectment, 189
Execution, 207

Bills againſt Attornies, &c.

See **Amendment**, 24, 16
Attorney, 43, 44

Bills of Attorney.

See **Attorney**, 46, 140
Coſts, 128

Bills of Exchange and Promiſſory Notes.

See **Executors**, &c. 164
Inquiry, 233, 234
Trial, 453
Venue, 491

Certiorari.

SEE **Amendment**, 12
Priſoner, 399

Commiſſion.

Commiſſioners Names, according to 12 *Ann.* to examine touching ſecret Truſts for Papiſts, ſtruck by Prothonotary, and Interrogatories ſettled by him, *Page* 2, 350

Commitment.

See **Habeas Corpus,** 223, 20
Priſoners, 385, 388

Compoſition.

In an Action on the Statute of Uſury, Proſecutor cannot Compound without leave of the Court, 118

See **Trial,** 459

Continuance.

See **Execution,** 205
Imparlance, 345
Pleadings, 345

Coſts.

7 *l.* 3 *s.* 10 *d.* taken off of Attorney's Bill of 75 *l.* 15 *s.* 7 *d.* Attorney ſhall have the Coſts of Taxation, 118

Coſts denied on not executing Inquiry according to Notice, now altered, and the ſame as for not proceeding to Trial, 118, 123, 230

In Action for Money received to Executor's Uſe, Executor muſt pay Coſts, *Page* 119

Attorney's Bill not to be taxed after he is dead, 119

So tho' Money offered to be brought into Court, 119, 122

Coſts to be paid on common Rule in Ejectment to the Repreſentative of Plaintiff's Leſſor, 119

On an *Aſportavit* or Injury done to a Perſonal Chattel, Plaintiff muſt have his Coſts, tho' Damages under 40 *s.* 119

So for tearing Plaintiff's Cloaths, 120

Otherwiſe on breaking a Door, which was fixed to the Houſe, 121

On Not guilty to a new Aſſignment, and Damages under 40 *s.* no more Coſts than Damages, 124

In Action for Scandal, Defendant juſtifies, Damages under 40 *s.* full Coſts taxed and Execution; there ſhould be no more Coſts than Damages, ſpecial Damage not being proved; Execution ſet aſide with Coſts, 128

Abbreviations in Attorney's Bill helped after Verdict, 121

Attorney's Bill not to be taxed after Inquiry executed, 124

Attorney's Bill for Buſineſs in *Doncaſter-Court* not to be taxed here, 122

Proceedings not to be ſtaid tho' Action brought before the End of a Month after Delivery of Bill, 123, 243

A Bill muſt be firſt moved for, and then a Motion to tax it, 126

On Entry of *Nil capiat per breve* on a Plea in Abatement, no Coſts, 120, 257

On a Point reſerved, and Judgment for Defendant, who dies, Coſts muſt be paid to his Executor, *Page* 120

Demand of Coſts muſt be made at ſame time Rule is ſerved, 120

On a Repleader and Judgment for Plaintiff, no Coſts allowed for the immaterial Pleadings, *&c.* 125

In Ejectment one Defendant confeſſes Leaſe, *&c.* and a Verdict againſt him for a Third Part, other Defendants did not confeſs it, *&c.* Coſts againſt him on Motion, 121, 174

In Trover, or any other Action, ſave Ejectment, Proceedings in ſecond Actions not to be ſtaid until Payment of Coſts in firſt, 125

And in Ejectment if Party in Priſon no Stay, 180

Nor Security to be given for Coſts if Infant Leſſor, *&c.* in Ejectment, 177

Attachment for not paying Coſts to an Adminiſtrator, ſo an Executor, 122

On a Nonſuit in Prohibition, Adminiſtrators, Plaintiffs pay no Coſts, 127, 129

On a Diſcontinuance, Adminiſtrator, Plaintiff pays Coſts, 169

Coſts of a Reference not to be allowed, 123

Coſts of ſtriking a Special Jury not to be allowed, but all other reaſonable Coſts relating thereto may, 123

Alter'd per Stat. 24 *Geo.* 2.

On Verdict againſt a common Informer, he muſt pay Coſts, 124

No Security for Coſts to be given by an Informer, 126

Verdict againſt an inferior Tradeſman for killing Game, he muſt pay Coſts, *Page* 125

Prochein Amie of Plaintiff liable to Coſts, 128

See **Attachment,** 34
Attorney, 47, 11
Award, 166
Ejectment, 182, 183
Imparlance, 227
Inquiry, 233
Judgment, 20, 32, 263, 275, 271, 303, 15
Money into Court, 283, 284, 287
Nonſuit, 312
Outlawry, 321, 323, 324
Pleadings, 346
Proceſs, 419
Replevin, 429
Trial, &c. 459

Where an Attorney makes an Abatement in his Bill, the Court will conſider the Sum accepted as his Demand; and if Deduction from that does not amount to a ſixth Part, he ſhall not pay the Coſts of taxing, 128

No Coſts againſt Plaintiff Adminiſtrator, where Converſion in Inteſtate's Life-time, 129

Aliter where in his own Time, 132

A new Aſſignment no Special Pleading to intitle Plaintiff to more Coſts than Damages, under 22 *&* 23 *Car.* 2. 129

Doubted if Adminiſtrators, Plaintiffs in Prohibition, ought to pay Coſts for not proving their Suggeſtion within ſix Months, 129

Coſts of Suit in Prohibition commence from the Suggeſtion, 130

In Prohibition, where a feigned Iſſue was directed to try a Fact for the Information of the Court, on

on a Verdict for Plaintiff, Coſts given him, *Page* 130
Executor, Plaintiff, not liable to Coſts on a Nonſuit, according to Statute, 130
Coſts in one Cauſe refuſed to be ſet againſt Coſts in another, the Parties not being the ſame, 130
But granted where the ſame, 145
Defendant cannot move for Judgment as in Caſe of a Nonſuit, after having obtained a Rule for Coſts for not proceeding to Trial, 131, 314, 316
Where ſeveral Defendants in Ejectment, and one acquitted, how he is to have Coſts, 131
No more Coſts than Damages in Action for Words, unleſs the Words are not actionable in themſelves, but only with reſpect to the ſpecial Damage, 132, 135 142
Though the Plea confeſſes the Treſpaſs, yet Iſſue joined, and Trial, and Verdict for Defendant, but Court gave Judgment for Plaintiff; and Writ of Inquiry being executed, how Coſts given him, 133
Plaintiff ſhall not pay Coſts for not proceeding to Trial according to Notice, where his Default is not wilful, 133
Ejectment in this Court ſtaid till Coſts in a former brought in *B. R.* paid, 133
Where Plaintiff intitled, or not, to more Coſts than Damages, the Damages under 40 *s.* 134, 144
Coſts denied for not executing Writ of Inquiry before a Judge of Aſſize, purſuant to Notice, 135
From what Time treble Coſts upon inſolvent Debtors Act are to be computed, 136
How Coſts to be taxed, where Defendant pleads ſeveral Pleas by Leave of the Court, and ſome are found againſt him, *Page* 136, 140, 141
Coſts of an Amendment paid Plaintiff's Agent after Plaintiff's Death, ordered to be returned, 138
In Prohibition Coſts given purſuant to *Stat. Will.* 3. 138
In Trover againſt three, and two acquitted, no Coſts for them, 139
In *Quare Impedit* no Coſts, 139
How Coſts where Iſſue and Demurrer joined, and Verdict on one for Plaintiff, and on the other Judgment for Defendant, 141
Executors and Adminiſtrators liable to Coſts in no Actions which they cannot bring in their own Right, 141
Aſſault and Battery againſt two, who plead ſeveral Matters, Verdict for one Defendant in one Plea, but Coſts denied; 4 & 5 *Ann.* not extending to the Caſe, 143
So doubted if it extends to Replevin, 141, 144
Though Arbitrators award Coſts of Suit and Reference, yet Prothonotary only to tax to the Reference, 58
Where Countermand of Trial is regular, Coſts cannot be allowed for a Witneſs who ſet out before it, 307
Coſts ordered to be paid by Attorney both to Plaintiff and Defendant, for pleading fraudulently two Judgments without Defendant's Order or Privity, 358

See **Ejectment,** 191

In Treſpaſs againſt four Defendants, Verdict againſt one only, the reſt acquitted; Motion by them, on Affidavit that Plaintiff was poor, *&c.* to have their Coſts deducted out of what Prothonotary ſhould allow Plaintiff againſt the other Defendant, denied, *Page* 145

Money paid into Court ordered to be paid to the Aſſignees of Plaintiff, who was become a Bankrupt, they paying his Attorney's Bill to be taxed by Prothonotary, 145

In two Actions between the ſame Parties, Proceedings on the final Judgment, in that wherein the leaſt Damages were recovered, ſtayed, and the Damages and Coſts allowed the Defendant towards Payment of the larger Sum recovered by him in the other Action, 146

Avowant though not named in the *Stat.* of 4 *Ann.* held to be within the Meaning and Intent of that Statute; and allowed Coſts on the Pleas found for him, to be deducted out of Coſts allowed Plaintiff, 146, 147

On Affidavit of Death of Leſſor of Plaintiff, Rule that Proceedings ſhould ſtay till Security given for Defendant's Coſts, 147

The Rule for Coſts of Taxation of an Attorney's Bill, ſhould not in the firſt Inſtance be abſolute, but to ſhew Cauſe, 147

Since the Statute of 2 *G.* 2. *c.* . Coſts of Taxation have been reciprocally given to the Party charged, and to the Attorney, as a ſixth Part has or has not been taken off, *ibid.*

Double Coſts not allowed on a Nonſuit in Replevin, where Plaintiff declared for taking and detaining an Ox, and Defendant avowed the Taking as a Seizure for a Heriot Cuſtom, claiming no Right to diſtrain, *Page* 148

Aliter had it been for Heriot Service, *&c.* are diſtrainable, *ibid.*

Rule for Coſts in Prohibition, Defendant having forced Plaintiff to deliver a Declaration, and then pleaded only that he did not proceed in Spiritual Court after the Prohibition, which Court held to be a ſham nugatory Plea, not being to the Merits, and ſuch a Plea as would not intitle Plaintiff to Coſts under *St.* 8 & 9 *Will.* 3. *c.* 10. *ſ.* 3. 148

Where in Treſpaſs no more Coſts than Damages, Iſſue on Plea of Not guilty to the *Novel* Aſſignment being found for Plaintiff; and Defendant not entitled to Coſts, *tho' other Iſſues on Pleas of Juſtification* found for him, 149

Rule to Tax Plaintiff his Coſts in Ejectment againſt one of the Defendants, who did not appear on the Trial, and confeſs Leaſe, Entry and Ouſter, 149

Coſts of a former Aſſizes when a Cauſe is made a Remanet, not allowed unleſs by Conſent of Parties expreſſed in a Rule or Order entered into for that Purpoſe, 150

In Debt on *Stat. Edw.* 6. for not ſetting forth Tythes where treble Value is recovered, Coſts are given where ſingle Value found by Jury does not exceed 20 Nobles by *Stat.* 9 *W.* 3. *c.* 10. *ſ.* 3. without Coſts, if the ſingle Value exceeds 20 Nobles. In Spiritual Court double Value is recoverable with Coſts, 150

Plaintiff entitled to Coſts in an Action againſt the Inhabitants of the Hundred on the *Stat.* 1 *G.*

2. *c.* 5. againſt Riots, where his Dwelling Houſe demoliſhed, *Page* 151

Where a Cauſe is made a Remanet, and neither Party to blame, the Coſts of the former Aſſizes are allowed, after a Verdict for Plaintiff or Defendant at the ſubſequent Aſſizes in *B. R.* but not in *C. B.* proper for Judges to confer to bring about a Uniformity, 153

Covenant.

See **Money into Court**, 284, 357
Pleadings, 354

Courts of Conſcience.

Leave given to enter a Suggeſtion on the Roll, (purſuant to *Stat.* 1 *W. & M.* erecting Courts of Conſcience at *B.* and *G.*) that the Parties are both Inhabitants of *G.* and the Debt recovered under 40 *s.* 353

Damages. Vide Inquiry, Trials.

IN Aſſault and Mayhem, Damages increaſed on View and Examination of Surgeon, 153

Reference to Prothonotary to aſcertain Damages, improper, 428

Verdict never ſet aſide for Smallneſs of the Damages, tho' frequently for exceſſive Damages, 445

Scandalous Words, ſome not actionable, Damages intire: New *Venire facias* awarded that Plaintiff might ſever his Damages, *Page* 478, 480

See **Inquiry**, 233
Judgment, 15
Trial, 448, 455

Inquiſition refuſed to be ſet aſide for Smallneſs of Damages, 154

Declaration.

See **Amendment**, 11, 12, 19. 488, 16, 186, 19, 20, 356, 167, 317
Bail, 92, 105
Demurrer, 163
Ejectment, 183, 185, 186
Executors, &c. 161
Imparlance, 225, 226, 227
Judgment, 267, 271, 274, 276
Notice, &c. 309, 310, 278
Priſoner, 392
Superſedeas, 500
Trial, 452
Venue. 489, 491, 492

Where Plaintiff delays himſelf, by not delivering Declaration *de bene eſſe*, 91

Pledges need not be put into the Declaration, 162

Action of Debt on Judgment laid in *Eſſex*, Declaration held bad on Demurrer, it ſhould have been in *Middleſex*, 165

Declaration well delivered from Time of Notice only, 227

Declaration by the Bye cannot be regularly delivered after the Term in which the Writ was returnable, 346

Declaration in Treſpaſs reduced from five to two Counts, 360

The

The particular Place of taking Goods, &c. ought to be inſerted in every Declaration in Replevin, *Page* 353

See **Notice,** 489

Demurrer.

Demurrer by Defendant withdrawn after Cauſe ſet down and Trial loſt on Payment of Coſts, &c, 155
If Joinder in Demurrer ſhould be ſigned by Council, 156
After Iſſue tendred, Demurrer, Leave to ſet it down after Paper-Day, 296
Demurrer to be entered on the Roll the Term it is joined of, 328
Demurrer, for that Memorandum of Bill ſets not forth in what Plea, bad, 331, 333, 336
On Recognizance of Bail without ſetting forth Condition, Defendant can't demur generally, 339

See **Money into Court,** 286
Pleadings, 359
Heir, 164

Declaration of *Trinity*, Imparlance to *Michaelmas*; Defendant obtains Time to plead till 15 *Dec.* Plaintiff has a Right to continue Imparlance on the Roll, according to the Fact, 161
Plea in Abatement traverſing the Inhabitancy, bad, 162
Not bad though beginning with "*Comes and defends the Injury when, &c.*" ibid.
Leave to withdraw Demurrer on Payment of Coſts, to pay 10 *l.* into Court upon the common Rule, and plead the General Iſſue, 162
Motion for a *Concilium* before Delivery of Paper-Book, irregular, and what the regular Practice, *Page* 163, 165
Demurrer to a Replication ſetting forth an Attachment of Privilege, for that no Return General or Special appeared, held, that the Words in the Declaration "*was attached by Writ, &c.*" refer to the Return, whenever it was, 163
Rule relating to Demurrer Books to be delivered to the Judges, 164
A Demurrer not an iſſuable Rejoinder within a Judge's Order, 168

See **Highways,** 156
Defendant, an Attorney of *C. B.* properly ſued there in reſpect of Privilege, though for a Debt under 40 *s.* as he might have pleaded his Privilege if ſued in the County Court, 159
Bail Bond not made void by *Stat.* 12 *Geo.* to prevent frivolous Arreſts, though the Penalty be rather more than double the Sum ſworn due, and indorſed for Bail on the Writ, 159
Calling Defendant Adminiſtrator in the Declaration, a ſufficient Averment of his being ſo, without ſetting out that Adminiſtration was committed to him, 159, 160
Attorney of *C. B.* may by Statute carry on Proceedings in the Court of Great Seſſions in *Wales*, in the Name of an Attorney of that Court, and declare for Fees and Buſineſs done there, 160
One having been arreſted, and the Sheriff's Officer having taken his Word to put in Bail, kept at Home, and declared he did ſo to avoid the Conſequences of the former Arreſt. This a plain Act of Bankruptcy, 160

Plea of a Judgment in *B. R.* Replication *Nul tiel Record*, concluding with a General Averment, if good, *Qu.* *Page* 161

Diſcontinuance.

After Judgment on Demurrer for Plaintiff, and Error brought, Plaintiff may diſcontinue on Payment of Coſts in Error and original Action, 169
Defendant may be arreſted a ſecond Time before Diſcontinuance, 169
After Judgment on Demurrer in Replevin for Avowant, no Diſcontinuance, 169
Rules for Diſcontinuance how to be drawn up, 170
If Diſcontinuance without Leave of Court, 170
Whether Plaintiff in Replevin may diſcontinue, 171
Application by Plaintiff to diſcontinue after Motion by Defendant for Judgment as in caſe of a Nonſuit, wrong, 316

Diſtreſs.

See **Trial**, 459

Dower.

See **Inquiry**, 234
Imparlance, 2

Ejectment.

Declaration and Subſcription read to Wife through a Wicket, and fixed on the Door, and Huſband owned Receipt of it, yet not ſufficient Service, *Page* 171
But Declaration is tendered and refuſed and Violence threatned, 'tis ſufficient to leave Declaration, *&c.* Tender good thro' a Window, 174
So if Declaration be delivered to a Daughter, and owned by Tenant, 176
So if delivered to a Father, and owned, 175
Tenant abſconds, Service on a Servant, and another fixed on the Door, good, 173
All Declarations muſt be delivered before Eſſoin-Day of every Term, 172
Declaration of *Trinity* with Notice to appear of *Hilary*, Appearance in *Michaelmas*, bad, 250
Declarations ſerved on Church-Wardens and Overſeers, when good, 181
Affidavit of Service on the Wives of *A.* and *B.* who or one of them are Tenants, *&c.* not ſufficient, 174
So Affidavit of Service on *A. B.* Tenant, or *C.* his Wife, 173
Landlord refuſed to be made Defendant inſtead of Tenant, but allowed to be added, 172, 173
So where Tenant had quitted the Poſſeſſion, 175
On *Stat.* 11 *Geo.* 2. Landlord was added Defendant to one Tenant who appeared for Part, and defends ſingly for the other Part, where Tenant refuſed to appear (as *per* Affidavit) and Plaintiff to ſign Judgment againſt Caſual Ejector as to the laſt Part with Stay, 179
Tenant not obliged to appear tho' indemnified, 173

Notice

Notice to appear in Beginning of *Michaelmas* Term in *London* ſufficient; Vacant Poſſeſſion, *Page* 175

Notice ſubſcribed by the Nominal Plaintiff inſtead of the Caſual Ejector, Rule for Judgment diſcharged, 172

Appearance muſt be entered with Filazer, and marked on common Rule, 177

Ejectment for Lands in *Wales*, good, 181

An Ejectment on a vacant Poſſeſſion in *London* or *Middleſex* may be moved any Time in Term, 172

Landlord refuſed to be made Defendant in all Caſes of vacant Poſſeſſions, (except ſuch as are within the late Act) he that firſt ſeals a Leaſe on the Premiſſes muſt have the Poſſeſſion, 177

Judgment arreſted, Declaration being of one Meſſuage or Tenement, 173

Judgment againſt Caſual Ejector, ſome of Defendants not confeſſing Leaſe, &c. 174

Confeſſion of Leaſe, &c. no Defence, and Defendant may afterwards move to ſet aſide the Verdict for Variance, *Page* 175

Sixteen Iſſues conſolidated into one, 176

Prothonotary muſt make juſt Allowances on paying Mortgagee off, 176

Mortgagor muſt pay off Bond-Debt as well as Mortgagee, elſe no Proceedings ſtaid, 177

Poſſeſſion ordered to be reſtored, could not be got, Leſſor of Plaintiff abſconding, Writ of Reſtitution awarded, 178

Attachment denied againſt Leſſor of Plaintiff and his Attorney for prevailing on Tenant to quit Poſſeſſion after Landlord admitted Defendant, *Page* 180

See **Amendment**, 17
Bail in Error, 103
Coſts, 131, 133
Execution, 208
Judgment, 270
Proceſs, 421
Warrant of Attorney, 44

On Nonſuit for want of confeſſing, &c. Leſſor of Plaintiff having taken out a *Fi' fa'* againſt Defendant's Goods for Coſts, inſtead of proceeding on the common Rule, *Fi' fa'* ſet aſide, with Coſts to be paid by him and his Attorney, &c. 182

Proceedings ſtaid on Payment to Plaintiffs, Aſſignees, of Mortgage-Money and Coſts, but not of a Bond, &c. due to them in their own Right, 182

Where Landlord made Defendant does not appear to confeſs, &c. how Execution to be taken out, 182, 185

What good Service of Declaration in Ejectment, 183, 185

Rule for Infant Leſſor to name a good Plaintiff, or give Security for Coſts, 183

Proceedings ſtaid on Payment to Plaintiffs, who were both Deviſees and Executors, Rent due to them as Deviſees, but not as Executors, &c. 184

Judgment arreſted for Uncertainty, the Ejectment being for a Meſſuage in the Pariſhes of *J.* and *M.* or one of them, 184

Rule for Judgment in *Michaelmas*, unleſs Appearance within four Days after Notice, denied, where Declaration was intitled of *Tri-*

nity 17th, inſtead of 16 *&* 17th, *Page* 186

Leave to take out Execution, neither Tenants nor Landlord added to them, *&c.* having appeared in Time, 186

Service of Declaration where Tenants abſcond or ſecrete themſelves, 188

Action of Debt on Judgment in Ejectment againſt a Perſon of the ſame Name with the caſual Ejector; Proceedings ſtaid, and Rule for the Attorney to ſhew Cauſe why he ſhould not pay the Coſts, diſcharged, 188

Motion by Leſſor of Plaintiff, that the conditional Rule entered into by his Wife by another Name, might be ſet aſide, denied; Court thinking the Validity of the Marriage a fit Matter to be tried, 189

Actions for meſne Profits tend to create double Expence; Plaintiff ſhould be ready at the Trial of the Ejectment to prove his Damages, 87

The Rule as to the Time from which meſne Profits are to be recovered, *ibid.*

See **Coſts,** 147
Execution, 212
Trials, &c. 468

On Affidavit of Tenant's abſconding, and of Service of Declaration on her Son who is her Servant; Rule to ſhew Cauſe why ſuch Service ſhould not be good Service, and leaving a Copy of this Rule at her Houſe good Service of it, 190

On Affidavit of Tenant's being Lunatick, and of Service of Declaration on the Perſon who had the Cuſtody of her, Rule for her and him to ſhew Cauſe why this Service ſhould not be good, *&c.* *Page* 190

Rule for Leſſor of Plaintiff and his Attorney to pay the Tenant Coſts of the Application, and reſtore his Goods, by Affidavit, they having taken Poſſeſſion of the whole Premiſſes, and removed the Goods when he had obtained a Rule to defend for two Thirds, 191

Judgment which was ſigned againſt the caſual Ejector, for a Miſtake of inſerting in the Body of the Plea, the Name of Plaintiff's Leſſor inſtead of that of nominal Plaintiff, ſet aſide with Coſts, 191

Rule to make Service of Declaration in Ejectment good, ſet aſide becauſe the Affidavit on which it was grounded was ſworn before Plaintiff's Attorney as a Commiſſioner, 192

Declaration having been ſerved without Prothonotary's Name on it, Rule for Judgment unleſs Tenant appeared within uſual Time upon Notice, 192

Another Rule in the like Caſe, 192

On Motion for Landlord to defend, held *per Cur.* That it is not every Perſon claiming Title, who is Landlord within the *Stat.* 11 *Geo.* 2. *c.* 19. but one who is in ſome Degree of Poſſeſſion as receiving Rent, *&c.* 193

Affidavit of Service of Declaration on *the Wife* of Tenant in Poſſeſſion, *as ſhe informed Deponent, and as he verily believes,* held ſufficient, 194

Proceedings ſtayed in *C. B.* the Premiſes being *Antient Demeſne Lands,* and to be ſued for in the Court

Court of the Manor wherein they lie, *Page* 194

Elizors.

See **Jury**, 465, 488

Error. Vide Bail, Diſcontinuance, Executions, Judgment.

Rule to Tranſcribe may be ſerved on Plaintiff himſelf, 410
Error not to be brought in the Name of the Caſual Ejector, 179

See **Bail**, 86
Bail in Error, 93, 103, 194, 211
Execution, 208, 212, 432
Judgment, 352
Outlawry, 324
Scire facias, 206, 432

Nonpros ſigned for want of tranſcribing the Record, ſet aſide, becauſe no final Judgment was entered, *Page* 195
Writ of Error no *Superſedeas* from the Sealing, but from the Delivery to the Clerk of the Errors, 205, 209

Evidence.

A Condemnation on a Foreign Attachment ſubſequent to an Action in *C. B.* no Evidence, 195
Where Words amount to Treaſon or Felony, Defendant ought not, on General Iſſue, to be admitted to prove the Truth in Mitigation, *Page* 195
Leave granted for Defendant to have Inſpection and Copies of Corporation-Books at his own Expence, 235
Defendant denied to ſee the Books of the Conic Lamp-Office, 236
Indorſor of Note acknowledged his Hand, this no Evidence againſt Drawer by Indorſee, 436
Defendant ordered to give Plaintiff a Copy of Articles for Rates, 439
Receiver appointed by three Adminiſtrators, each Adminiſtrator only liable for what he has received, 440

See **Habeas Corpus**, 222
Inquiry, 233, 234, 448
Pleadings, 361
Trial, 446, 449, 450, 456, 461, 463, 165

Executions.

There muſt be fifteen Days between the Teſte and Return, on a *Capias ad reſpondendum*, to ground Proceedings againſt Bail, 76
If a *Ca. Sa.* is returnable pending a Writ of Error, it is no regular Foundation for Proceeding againſt Bail, 83
Judgment in *Middleſex*, and a *Fi-Fa.* there returned *Nulla bona*, a common *Fi. Fa.* may Iſſue to another County without a *Teſtatum*, 196
Firſt *Fi. Fa.* need not be filed before *Teſtatum* Iſſues, 200
Where no Execution had iſſued within a Year from the Day of ſigning

ſigning Judgment, a *Sci. Fa.* muſt Iſſue, tho' Injunction ſtop'd Plaintiff, *Page* 197

Poundage and other neceſſary Charges may be levied out of a Penalty, 198

Ca. Sa. and *Fi. Fa.* not to be ſued out at the ſame Time, and Warrants taken out, 198

If Rents ſhould be paid out of Money levied in Execution, and Defendant a Bankrupt, 200

A Moiety of Damages levied on one Bail, and the other Bail not having Goods ſufficient to levy the Remainder, ſecond Execution againſt the Goods of firſt Bail held irregular, for Plaintiff might have levied the Whole at firſt, 202

Plaintiff may not take out Execution here and bring Action on Judgment in another Court, 203

Baron and Feme taken in Execution, Feme not to be diſcharged. 203

Execution after Error allowed and Bail, irregular, though Writ of Error was ſpent before Judgment ſigned, 260

But if final Judgment be not ſigned 'till a ſubſequent Term after Error allowed, Execution regular, 197

Error returnable Eſſoin-Day of Term, Judgment is ſigned of ſame Term, Execution cannot be ſued out, 198

If Writ of Error be not returnable before the Death of Chief Juſtice, 'tis loſt, but Execution may not be taken without Leave of Court, 201

Pending a Writ of Error Action brought on Judgment, and after Judgment Execution; Defendant ſhould have moved the Court; *Ergo* regular, 202

And ſuch Motion muſt be before ſecond Judgment, *Page* 203

Verdict againſt Four Defendants for 20 *l.* Judgment by Default againſt Fifth, Error brought by Fifth without Bail, Court will give leave to take out Execution againſt Four, 202

Error is a *Superſedeas* from Allowance, but no Contempt till Notice, 376

So if brought before Exigent executed, it ſtays Proceedings to Outlawry after Judgment, 434

See **Award**, 58
Ejectment, 182, 186
Proceſs, 413

After Execution executed, though Judgment for a Penalty, Court has no Power to refer to Prothonotaries to examine into Sum due, *&c.* and to Order Reſtitution of Overplus, 204

Rule to ſhew Cauſe why *Fieri facias* and *Venditioni exponas* ſhould not be ſet aſide, they not having iſſued from ſame Office in which Judgment was ſigned, diſcharged; Application being made too late, 204

Ca' ſa. iſſuing after more than a Year from the laſt, without Continuance on the Roll, ſet aſide, notwithſtanding a written Agreement, 205

Ca' ſa. iſſued after a Year and a Day from the Judgment, without *Scire facias* to revive, ſet aſide, [*ſed vide* 210.] 206

Action by Huſband and Wife, who fail in the Action, Wife only taken in Execution, diſcharged, 207

Execution ſet aſide, the *Scire facias* to revive having iſſued into a wrong County, 207

After Verdict for Plaintiff, Leave to take out Execution on the Judgment againſt the caſual Ejector, *non obſtante* a Writ of Error brought by Defendant, denied, *Page* 208

Where Plaintiff brings Action on a Judgment, he cannot take out Execution on the Judgment till he has diſcontinued the Action, 208

In Caſe of a *Teſt' Fi' fa'*, Court will not inquire nicely when the *Fi' fa'* in the original County was ſued out; it is ſufficient if it be produced returned, 208, 209, 211

Judgment in a Joint Action againſt ſeven Defendants, *Fi' fa'* ſued out againſt the Goods of one only, 210

A Bill of Sale is a Removal of Goods taken by a *Fi' fa'*, and a Year's Rent ordered to be paid the Landlord, 211

Certificate from Clerk of the Errors that no Bail is put in, is not neceſſary before taking out Execution, 212

If Defendant's Perſon be taken by *Ca' ſa'* and Bail in Error afterwards perfected, the Perſon ſhall be diſcharged; but in caſe of a *Fi' fa'* the Proceedings, ſo far as the Sheriff has gone, muſt ſtand, 212

Executor may revive, but cannot take out Execution pending Writ of Error, 432

See **Proceſs**, 424

In Ejectment after Verdict, though Writ of Error allowed, if no Recognizance be entered into nor Bail put in, Plaintiff is regular in taking out *Hab. fac. Poſſ.* and taking Poſſeſſion, *Page* 212

In Suits *by Bill*, *Fi. fa.* returnable on a general Return, inſtead of a Day certain quaſhed, 213

After a *Fi. fa.* executed, and Part of Debt and Coſts levied; Plaintiff before the Return of the Writ ſues out a *Teſtat. fi. fa.* and levies the reſidue; this irregular and *Teſtat. fi. fa.* ſet aſide with Coſts and Reſtitution, 213

Where *Fi. fa.* not returned, Continuances entered on the Roll, not ſufficient to ſupport *Ca. Sa.* on an old Judgment not revived, but *Ca. Sa.* ſet aſide with Coſts and *Superſedeas* awarded to diſcharge Defendant, 213

Defendant arreſted by *Ca. Sa.* pays the Money to the Sheriff's Officer, at the Return Sheriff returns that a *Fi. Fa* againſt the Goods of the Plaintiff in the *Ca. Sa.* at the Suit of the Defendant in the *Ca. Sa.* was delivered to him, and that he levied the Money in *Fi. fa.* out of the Caſh received on the *Ca. Sa.* Return held inſufficient, and Sheriff ordered to pay the Money levied under the *Ca. Sa.* to the Plaintiff, therein deducting Poundage, 214

Executors & Adminiſtrators. Vide **Evidence, Bail, Coſts, & Pleadings.**

See **Coſts**, 129, 132, 129, 130, 141
Ejectment, 184
Execution, 432
Money into Court, 287

Executors and Adminiſtrators may indorſe Promiſory Notes and Bills of Exchange, *Page* 164

Indorſee of Adminiſtrators may declare without *Profert* of Letters of Adminiſtration, 164

In Action againſt Adminiſtrator it is ſufficient to call him Adminiſtrator of the Goods, &c. without alledging that Adminiſtration had been granted to him, 167

After a Rule by Conſent to refer to the Prothonotary, Plaiintiff died before Report, his Executor, upon Application, made Party to the Rule, and Prothonotary directed to proceed without Conſent of Defendant to this Rule, 210

Motion for Executor to pay Defendant a Sum of Money, reported by Prothonotary to have been levied by Plaintiff more than was due, denied, 283

See **Money into Court**, 161, 289

Extinguiſhment.

A Feoffment extinguiſhes all collateral Rights, and a Right to a Way, 155

Fine.

FEME Conuzor died the Day after the Caption and after *Teſte*, but before Return of Covenant; if Pre-Fine paid, not to be ſtopt at King's Silver, 214

One Conuzor dies a Year after the Caption, Fine ſtopt at King's Silver, ordered to paſs on Rule *Niſi* ſerved on ſurviving Conuzor, *Page* 215

King's Silver ſhould require no other Affidavit, than that all Parties were alive when the Pre-Fine was paid, 215

A Fine acknowledged in *South-Carolina* can't paſs without Oath before one of the Judges of this Court, 216

A Fine *ſur conceſſit* and a Fine *ſur conuzance*, &c. can't paſs in one Fine, but the Caption being for both, one may be ſtruck out, 216

See **Amendment**, 28, 17, 20, 22, 21, 23

Fine by Infant Truſtees by Order of the Court of Chancery, how paſſed, 217

Fines taken at *Hamburgh*, how paſſed, 217

See **Amendment**, 24

Fine taken before an Attorney and a Tradeſman, the Attorney died without making Affidavit of the due Acknowledgment, the Fine ordered to paſs on the Affidavit of the Tradeſman, 217

A Caveat comes too late after the Return of the Writ of Covenant and Entry of Poſt-fine at the King's Silver Office, 218

The King's Silver is the Poſt-fine or fine for Licence to accord, *ibid.*

Rule to ſhew Cauſe why a Fine ſhould not be vacated on Suggeſtion, that one of the Cognizors was diſordered in her Senſes, diſcharged, on her being pro-

produced and examined in Court, and appearing of good Capacity, *Page* 218

Fine taken in *Italy* allowed to paſs though not ſigned by the Cognizors, one of the Commiſſioners attending, and making Oath that it was duly acknowledged before him and another, *&c.* 219

Proceedings to perfect a Fine ſtayed, and former Proceedings vacated, the Wife of one of the Cognizors dying before the Return of the Writ of Covenant, on Motion without putting the Parties to bring a Writ of Error. The Concord is to be made at the Return of the Writ of Covenant; if the Party die before that Day, there can be no Agreement, all is void, 220, 221

Habeas Corpus.

TO remove a Cauſe after Interlocutory Judgment too late, and a *Procedendo* granted, 221

Habeas Corpus after Iſſue joined too late, Sheriff may proceed, 221

Defendant committed on *Habeas Corpus*, tho' Day of Return paſt, 221

Habeas Corpus to charge a Member of laſt Parliament in Execution, Defendant remanded, 199

On *Habeas Corpus* Priſoner tendered above 1 *s.* a Mile to Sheriffs, which they refuſed, Attachment granted, 377

See **Amendment**, 13, 23
Bail, 88
Bail on Habeas Corpus, 90
Priſoners, 385, 388
Proceſs, 421

Habeas Corpus ad teſtificandum for two Priſoners in Execution in the *Fleet*, denied, for want of the Conſent of the Warden, *Page* 222

So Rule for their being examined on Intetrrogatories, and their Depoſitions read in Evidence at the Trial, denied, for want of Defendant's Conſent, *ibid.*

Where Defendant is to be charged in Execution on ſeveral Judgments, there muſt be a *Habeas Corpus* on every Judgment, 223

In what Cauſes Court has Juriſdiction to commit Priſoners, brought up by *Habeas Corpus*, to the *Fleet*, 223

Where Priſoner removed by *Habeas Corpus*, in what Court Plaintiff muſt declare, 384

Commitment (on an *Habeas Corpus* returnable before Chief Juſtice) by another Judge, regular, without Amendment of the Return, 20

Heir.

Debt on Bond againſt Heir on 3 & 4 *W.* & *M.* *c.* 14. on Demurrer, Judgment for him, the Teſtator's Eſtate being deviſed for Payment of Debts, 164

Heriots. See **Coſts**, 148
Money into Court, 289

Highways. See Demurrer.

A Perſon occupying only one Ploughland in a Pariſh not compellable to ſend into the Highways more than one Wain or Cart, though he keeps more, *Page* 156

Imparlance.

AFTER a General Imparlance, a ſpecial one muſt be obtained to plead in Abatement, 224
Action for Words charging Plaintiff with Murder, Defendant had Imparlance on Affidavit of Plaintiff's being under Proſecution, 224

See **Demurrer,** 161
Pleadings, 354

There can be no Imparlance after peremptory Rule to plead, 225
Imparlance ordered, Defendant being a Lunatic, 225
Though Writ returnable the firſt Return, Imparlance granted, Declaration not having been delivered with Notice to plead, according to the general Rule, 225, 226
But denied where a Notice had been ſerved, though not indorſed on the Declaration, 226, 227
By Virtue of a Rule for Leave to file a Bill to warrant Proceedings, Plaintiff may, as a neceſſary Conſequence, enter an Imparlance on the Roll, 227
But where not entered in Time, Plaintiff paid Coſts, *&c.* *ibid.*
Time to plead and an Imparlance are the ſame Thing, 345
Imparlance, how to be entered and continued on the Roll, *ibid.*
Imparlance not to be given in real Actions, 2

Infant.

See **Bail,** *Page* 88
Fines, &c. 217
Proceſs, 418

After proceeding to Judgment againſt Infant as of full Age, it is too late to apply for Rule to ſhew Cauſe why Appearance in Perſon ſhould not be ſtruck out, and Defendant appear by Guardian, or in Default Plaintiff to do it for him, 413

Informer. Vide **Coſts.**

Plaintiff's Attorney ordered to give Defendant an Account of Plaintiff's Abode after Trial and Point reſerved, but Security for Coſts was denied, 126

Inquiry.

Three Breaches in Covenant, one confeſſed, two controverted, *Venire tam quam*, Verdict for Plaintiff, but omitted to inquire Damages of firſt Breach, a Writ of Inquiry was granted, 228
On Inquiry no Intereſt to be allowed on Balance of Account, otherwiſe on Notes and Bills of Exchange, 228
Judgment on *Nul tiel Record* as to one Iſſue, *Non Aſſumpſit*, alſo pleads, Inquiry not to be executed till Trial, 229
Inquiry executed before Judgment given

given on Demurrer was actually ſigned, irregular, *Page* 229

Fifty Pounds not exceſſive Damages on an Inquiry in an Action for a falſe Return of a *Reſcous*, 229

If Jury find no Damages, Inquiſition may be quaſhed, otherwiſe if they find Damages tho' never ſo ſmall, 230

If no Damages found, a ſecond Inquiry may not iſſue without Leave, 231

Inquiry not to be ſet aſide for being returnable on a Return-Day, inſtead of Day certain, 230

See **Amendment,** 15
Coſts, 135
Damages, 154
Judgment, 274
Notice, &c. 304, 305, 309, 310, 135, 264

Motion to ſet aſide Writ of Inquiry, it having been executed before a Deputy appointed by Under-Sheriff, 231

So for its having been altered before the Return, but denied, it having been reſealed, and not made Uſe of before, 232

Inquiry ſet aſide on Payment of Coſts, *&c.* for exceſſive Damages, 233

Objections to the Regularity of an Inquiry, cured by Defendant's making a Defence, 233, 309, 413

On executing Inquiry, a Note and Indorſement muſt be produced and proved; not pleading is not a ſufficient Admiſſion of them, 233, 234

On executing Inquiry in Dower, how, and to what Time the Jury are to compute the Third Part and Coſts, 234

Rule abſolute for executing Inquiry before a Judge of Aſſize, tho' no Affidavit produced to ſupport the Rule, *Page* 235

Verbal Deputation for executing Writ of Inquiry inſufficient; it ſhould be in Writing, under Hand and Seal, 413

Inquiſition ſet aſide, and Leave for Plaintiff to execute a new Writ of Inquiry; the Sheriff, on Execution of the Writ, having admitted improper Evidence for Defendant, whereby Damages were leſſened, 448

Inſpection of Court-Rolls and Books.

Rule abſolute for Defendant, a Brewer, to inſpect the Company's Books, and take Copies, though no Member, 236

Defendant a Copyholder of the Manor, denied Leave to inſpect and take Copies of the Court-Rolls, *&c.* for want of Affidavit that Application had been made to the Lord, or his Steward, who had refuſed, 236

Rule for a Freehold Tenant of a Manor to have Leave to inſpect the Court Rolls, 37

The ſame Rule with Reſtriction to particular Entries, 38

Leave to inſpect Corporation Books denied to one who was no Member of the Corporation, 38

Interrogatories.

See **Habeas Corpus,** 222
Commiſſions, 2, 350

Iſſues. Vide **Variance.**

After Iſſue joined, tho' improperly, a Demurrer can't be received, *Page* 84
On *Nul tiel Record* Plaintiff may continue the Day for bringing in the Record, 84
Iſſue to be left in the Office, if Attorney not to be found, and muſt be paid for at Defendant's Peril, 243
On a *Comperuit ad diem*, a Record of one Bail is as no Bail, 247
Iſſue tendered to a Porter at Defendant's Attorney's Chambers, and not paid, Judgment ſigned regular, 253
On Non-payment for the Iſſue in Ejectment Judgment may be ſigned againſt Defendant, but not againſt Caſual Ejector, 253
On a *Nul tiel Record* there is a compleat Iſſue joined; See the Form of the Entry, 335
On *Nul tiel Record* it muſt be brought in the Day given, 343
Agreement to deliver Iſſue in the Country void, 251

See **Amendment,** 18
Judgment, 263, 275
Notice, &c. 306
Nonpros, &c. 318
Oyer, 327
Rules, 465
Trial. 461, 464

Judgments. Vide **Executions.**

Plaintiff may ſign Judgment for Non-payment for Copy Indentures of which *Oyer* was prayed, *Page* 238
So where reſtrained by Injunction, after Rule given, without a new Rule, 238
So without an Appearance entered, if Defendant's Attorney has undertaken, 238
Plea delivered in the Country, and Iſſue there tendered but not paid for, Judgment therefore held regular, 239
Declaration left in Office of *Hilary*, afterwards Appearance entered and Notice of Declaration given in *Eaſter*, Judgment in *Trinity*, good, 242
A Judgment entered by forged Warrant of Attorney ſet aſide, and a *Vacatur* entered, 239
Regular Judgment ſet aſide on Payment of Coſts, pleading an iſſuable Plea and taking ſhort Notice, 242
So on pleading *Plene Adminiſtravit*, 260
So on pleading General Iſſue, &c. 243
So in Ejectment, 250
But Statute of Limitations not to be pleaded, but General Iſſue, 253, 256

After Judgment too late to complain of Irregularity in Appearance, *Page* 242
After Order for Time to plead Judgment regular without a new Rule, 243
Judgment ſet aſide after Inquiry executed, one of the Defendants having no Notice of Writ or Declaration, 246
Judgment becauſe Defendant had pleaded Coverture improperly, ſet aſide, 246
Proceedings in Debt on Judgment, pending Error, ſtaid on giving a new Judgment. In *B. R.* Proceedings ſtaid without, 246
Judgment ſigned on *October* 28. Motion on *November* 7. too late, 247
A Rule to plead given before Notice of Declaration, and Judgment thereon, bad, 248
One Judgment againſt Executrix after Verdict and Death of Defendant, ſecond Judgment was an Action on firſt Judgment where Plaintiff recovered *de Bonis Teſtatoris*; third was on a *Devaſtavit de Bonis propriis*; and fourth was on third Judgment to hold Defendant to Bail, all regular, 248
Where Plaintiffs enter the Appearance, Judgment may be ſigned without calling on Defendant's Attorney for a Plea, 249
Judgment ſhould be ſigned before Writ of Error ſpent, 249
Judgment becauſe Defendant had pleaded in Abatement without taking out Declaration irregular, 250
Firſt Judgment being ſigned by Miſtake may be waived and ſtruck out, and new Rule and Judgment ſigned without Leave, *Page* 251
If *Non-pros* be ſigned irregularly, Plaintiff may proceed to Judgment, 252
Judgment ſigned *nunc pro tunc*, Defendant dying pending the Argument, 255
Motion to ſet aſide Judgment muſt be two Days before Inquiry executed, 255
If Agent gives Time, Country Attorney can't ſign Judgment till that time is out, 256
Judgment on Warrant of Attorney entered on Affidavit of Defendant's being living at *Jamaica* four Months before, 256
Declaration left in the Office (before Appearance) not marked *de bene eſſe*, Judgment bad, 257
In Deceit for ſuffering Recovery of Lands of Ancient Demeſne, on Defendant's confeſſing Action, and the King's remitting Damages, Judgment granted, 258
Satiſfaction entered *nunc pro tunc*, Plaintiff being dead and Heir Adminiſtrator being a Lunatick, 258
Final Judgments to be entered up immediately; Plaintiff's Repreſentative muſt enter final Judgment within two Terms after Plaintiff's Death, 259
Judgment ſet aſide in *Trinity* Term, in *Michaelmas* new Notice of Declaration and ſecond Judgment, this alſo ſet aſide, the Writ being returnable in *Eaſter*, 291, 304

See **Amendment**, 18
Bail, 92
Ejectment. 184, 186
Infant, 413

Money

Money into Court, *Page* 285
Nonpros, &c. 313, 316

Judgment-Roll where received and filed *nunc pro tunc*, 261, 262
Motion to ſet aſide the Doquet of a Judgment as void, by 4 & 5 *W. & M.* denied, there appearing no Fraud, but that the Roll was accidentally miſlaid, 261
Judgment ſigned for want of paying for Iſſue-Book, ſet aſide without Coſts; Plaintiff having demanded more than was due, 263, 275
Where Defendant, under Order to plead an iſſuable Plea, pleaded in Abatement, held Plaintiff was regular in ſigning Judgment, and not obliged to apply to the Court to ſet aſide the Plea, 263
Judgment ſet aſide, without Coſts, Defendant, on craving Oyer, not having had a perfect Copy of the Bond, *&c.* given him, 263
On Iſſue of *Nul tiel Record*, how the Rule for Judgment to be drawn up, 264
Judgment ſet aſide on Terms, tho' Time to plead was out; Judge's Summons for further Time having been ſerved before Judgment could regularly be ſigned, 265
Plaintiff died the 1ſt *December*, Judgment ſigned the 6th, held good by Relation, the Roll having been filed before the Eſſoign-Day of *Hilary*, 266, 267, 268, 270
Where a Judge's Order for two Days Time to plead, Judgment cannot be ſigned till the third Day in the Afternoon, 266
Judgment ordered to be entered for Plaintiff, notwithſtanding the Verdict againſt him, the Plea having confeſſed the Treſpaſs, *Page* 266
How ſuch Verdict and Judgment to be entered, *ibid.*
Judgment ſigned for want of Affidavit on a Parol Demurrer, put in by an Infant, ſet aſide, it not being requiſite, 267
Judgment refuſed to be ſet aſide, becauſe Declaration was delivered, and Pleas demanded, in the Country, 267
Motion to ſet aſide Judgment, Proceedings having been upon Statute for preventing vexatious Arreſts, which was expired, 272
After Judgment ſigned, it is too late to complain of Irregularity of Proceſs, 269
Where Defendants plead ſeveral Pleas, and there is Judgment for Plaintiff on one, the other Pleas muſt be tried before Plaintiff can recover, 269
Judgment againſt Caſual Ejector ſigned, for want of a Plea in Form ſet aſide, without Coſts, 270
Judgment on Warrant of Attorney ſigned the Day after Defendant's Death, refuſed to be ſet aſide, 270
Defendant, under Judge's Order to plead iſſuably, rejoin *gratis*, *&c.* inſtead of rejoining, demurred; Plaintiff ſigned Judgment, and held regular, 271, 168
A regular Judgment ſet aſide, on Payment of Coſts, and pleading an iſſuable Plea, without confining Defendants to the General Iſſue, 271, 303
Judgment ſet aſide; Plaintiff, after *Superſedeas* of *Exigent* having delivered a Declaration, without Notice to plead indorſed, and ſigning Judgment in four Days, when

when Defendant was intitled to eight, *Page* 271

Judgment ſigned for want of new Pleas after Amendment of Declaration, ſet aſide. Defendant may, or may not, plead *de novo*, as he thinks proper, 273

Judgment and Inquiry ſet aſide, Declaration being intitled of *Michaelmas* inſtead of *Hilary* Term, 274

Judgment for Plaintiff on *Nul tiel Record*, though objected that the Record produced was for Damages and Coſts, and the Declaration for Damages only, 274

A regular Judgment ſet aſide, on Payment of Coſts and pleading the General Iſſue, 275

Judgment ſet aſide for want of a Demand of a Plea in Writing, the Demand of a Plea indorſed on Declaration delivered not ſufficient, 276

Motion in Arreſt of Judgment for Uncertainty, Declaration in Treſpaſs being for taking, *&c.* divers Quantities of *China* Ware, *&c.* but denied, 276

Judgment, and all ſubſequent Proceedings againſt Bail, ſet aſide, it not having been ſigned till about two Months after the Death of the Original Plaintiff, 277

Where a Judgment is erroneous in Fact, if it may alſo be deemed irregular, and the Application to ſet it aſide be recent, Bail ought not to be put to *Audita Querela*, 277

On Motion to ſet aſide a Judgment by Warrant of Attorney, ſuggeſted to be on an uſurious Contract, an Iſſue directed to try the Fact, 277

The Entry of Arreſt of Judgment muſt be made before Plaintiff can bring a Writ of Error, or maintain a new Action, *Page* 352

Regular Judgment and Inquiry ſet aſide, and Plea amended, on Payment of Coſts, and bringing the Damages found into Court, 15

Judgment ſigned for Want of a Plea, ſet aſide, Defendant having pleaded (though after the Rule for pleading was out) and entered Appearance on the laſt Day for appearing, 39

Jurata.

See **Amendment**, 11

Juriſdiction.

Debt for 20 *s.* a Year's Rent, Damages laid 100 *s.* no Stay of Proceedings, 497

Court will not try *Quantum* of Plaintiff's Demands by Affidavit, 497

Jury. 21, 26, 320, 325.

See **Trial**, 453, 454, 455, 457.

Where a Special Jury may be moved for by Defendant, after Cauſe made a *Remanet*, 449, 461

Special Jury, where to be ſtruck and returned by *Elizors*, 465

Elizors, how to be choſen, 465

Motion for Special Jury too late after *Venire facias* and Return filed, 488

Money Paid into Court.

MAY be at any Time before Plea, *Page* 279
Not to be paid back to Executors on Defendant's Death, 279
If Principal, Intereſt and Coſts may be paid in when Plaintiff is an Executor, 279
Money paid in on Debt for Rent, and *Nil debet* pleaded, ſo in Covenant for Non-payment of Rent, 280
Rule diſcharged, Plaintiff being Adminiſtrator, and not ſo drawn up, 280
Iſſue joined, Plaintiff may have Leave to take Money out on Payment of ſubſequent Coſts, 280, 282
Plaintiff recovers a leſs Sum than paid into Court, Defendant ſhall have that Money towards his Coſts, 280
Tho' Plaintiff die before Trial, Defendant can't have his Money back, 281
In *Trover*, Rule to accept of Goods and Coſts, 281
Money muſt be paid before Delivery of Plea, 281
Can't be brought in after regular Judgment, 281
After Money paid in and Iſſue joined, it can't be increaſed, 282

See **Demurrer**, 162
Pleadings,

The Form of the Common Rule altered, and made obligatory upon Defendants to pay Coſts, 283
Common Rule obtained from Secondary for Payment of Money on a Bill penal, with a Count added on *Mutuatus*, wrong, but refuſed to be ſet aſide after Verdict in Defendant's Favour, *Page* 283
Rule to ſhew Cauſe, why, on Defendant's bringing into Court Curtains, *&c.* Proceedings ſhould not ſtay, diſcharged, they having been altered, *&c.* 284
Money brought into Court in Covenant, where the Breach was aſſigned in a Sum certain, 284
Money brought in by Defendant, ordered to be paid Plaintiff, tho' Judgment arreſted, 284
Where Plaintiff, after Refuſal, applies for Leave to take Money, he muſt pay ſubſequent Coſts to Defendant, 284, 287, 357
Leave to bring Money, *&c.* refuſed in Action on a Bond, conditioned for Bailiff's Good Behaviour, and for his paying Money for the Sheriff's Uſe, 285
So in Action for the Penalty of a Charter-Party, 285
Leave never given to bring Money into Court after a regular Judgment ſet aſide on the uſual Terms, 285
Leave to pay Money, *&c.* with reſpect to two Counts, and as to reſt to plead the General Iſſue, the Statute of Limitations, and a Set-off, 286
But denied to pay Money and plead as to ſome Counts, and demur to the reſt, 286
Leave to add more Money, denied, Defendant having pleaded and brought no Money in, 286
Leave to pay Money in Debt for Penalty of a Bond, conditioned for

for Performance of Covenants in a Leaſe denied, *Page* 286
Leave to bring Money, and plead *Plene adminiſtravit*, as well as General Iſſue to the Whole, 287
A Rule by Conſent where Plaintiff was Executrix, 287
Leave never given to bring Money into Court after Plea pleaded, without Plaintiff's Conſent, 349
Leave to plead Bankruptcy to the firſt Count, pay Money, *&c.* on the Common Rule, and plead the General Iſſue, to the other Counts, 350
Leave to withdraw Plea, pay 50 *l.* into Court, and plead the General Iſſue, granted upon Terms, 362

See **Coſts,** 145

Rule to withdraw Plea of general Iſſue, and pay Money into Court, pleading the ſame Plea again, *&c.* 289
Rule by Conſent for Payment of Money brought into Court, to Executrix of Plaintiff, together with ſuch Coſts, as Plaintiff would have been intitled to if he had accepted it, 161
Money paid into Court in Action on a Bond to ſecure an Annuity, 288
Rule for paying Money denied in Covenant, it appearing Defendant was to render to Plaintiff the beſt live Beaſt for a Heriot, or 40 *s.* at Plaintiff's Election, 289
Rule to bring in Principal, Intereſt and Coſts in Action on Bond, though Plaintiff was an Executor, 289

Motions, Rules, &c. Vide **Trials and Notice.**

Motion to ſtay Proceedings for Irregularity in Notice of Proceſs muſt be before Judgment, *Page* 296
Of Notice of Declaration two Days before Inquiry to be executed, 255
So of charging Priſoner with a Declaration, 372
The Copies of Proceſs ſerved muſt be annexed to Affidavit to ſtay Proceedings, *&c.* 298
Original Rule muſt be ſhewn at the Time of Service, 403
Rule *Niſi* for Attorney to pay Money, requires not perſonal Service, 404
Motions to put off Trials muſt be two Days before Trial, 437, 438
Motion in Arreſt of Judgment muſt be on the Appearance Day of the Return of *Habeas Corpus*, 445
To change the *Venue* can't be on laſt Day of Term, tho' Affidavit of Notice, and tho' an Affidavit could not be procured ſooner, 480, 486
Motion for a new Trial muſt be within the firſt four Days of Term, 446

Mutual Debts.

Debts of inferior Nature cannot be ſet off againſt ſuperior Demands; now altered by *Stat.* 8 *Geo.* 290
Debt for Rent equal to a Bond, *Page* 290

In Covenant for Non-payment of Rent, on *Non eſt factum*, Sums due on Covenant in the ſame Deed for Breaches ſet off, 291

Nonſuit, Non-proſs. Vide **Judgments.**

NOT to be ſet aſide tho' Plaintiff depended that Defendant had made a Miſtake, the Iſſue being on Defendant, 295
Declaration demanded in the Country by Conſent, yet irregular, 311
Plaintiff nonſuited by Judge's Miſtake, yet no Relief, 311
If Plaintiff dies after Nonſuit, and before the Day in Bank, it is not helped by the Statute, but is Error, 312
Rule to declare muſt be in that Office where Plaintiff's Attorney practiſes, 312

See **Coſts,** 131, 314, 316
  Diſcontinuance, 316
  Ejectment, 182
  Error, 195
  Trial, 458

Nonſuit ſet aſide on Payment of Coſts, 312
  Contra, 316
Judgment as in Caſe of a Nonſuit, how to be moved for, 313, 316
What Cauſe held ſufficient to prevent Nonſuit, 313, 314, 315, 317, 464
Where the Court admits the Cauſe ſhewn ſufficient, they will appoint a future Day for the Trial, 313
Rule to ſhew Cauſe why Judgment as in Caſe of a Nonſuit, on what Terms diſcharged, 313, 315, 316
Application for Judgment as in caſe of a Nonſuit, when to be made, *Page* 314
Nonpros ſigned, Plaintiff in Replevin, though under Order to plead iſſuably, having demurred, held regular, 314
Regular Nonpros, on what Terms ſet aſide, 314
Actions *Qui tam, &c.* within the Statute for Judgment as in caſe of a Nonſuit, 315
So Replevins, 317
Nonpros for want of entring Iſſue ſigned a Day too ſoon, ſet aſide, 318
Rule to ſhew Cauſe why Judgment as in Caſe of a Nonſuit diſcharged, Plaintiff having entered his Cauſe, and being ready to proceed, but the View which was directed was returned by four Jurors only, *&c.* 498
In ſpecial Action on the Caſe againſt an Attorney, for ſuffering an inſolvent Debtor to be diſcharged without Oppoſition, where Plaintiffs did not proceed to Trial the preceeding Term. Rule abſolute for Judgment, as in Caſe of Nonſuit under peculiar Circumſtances without giving Plaintiffs another Opportunity to try the Cauſe, 318

Notice. Vide **Motions and Proceſs.**

Notice of Juſtification muſt be two Days before Day of Juſtification, 82
And *Sunday* muſt not be one of the Days, 303
On Motion for Arreſt of Judgments the laſt Day of Term, Notice neceſſary, 247

On a *Nul tiel Record* Plaintiff may give Notice of Inquiry, if, &c. *Page* 249

Where no Proceedings ſor twelve Months, a Term's Notice of Inquiry muſt be given. (*Vide* the new Rule,) 291, 294, 304

Notic of Trial or Inquiry ſhall not be continued more than once, that's ſhort Notice, 292

Notice of Inquiry bad, if no Hour mentioned, tho' Defendant ſaid he would make no Defence, 293

Notice of Inquiry at Ten, or as ſoon as Sheriff, &c. bad, 295

Notice of Inquiry between Ten and Two bad, it muſt not be above two Hours, 295, 296

Continuance of Notice of Inquiry ſhould be ſerved two Days before, 297

Notice of Inquiry ſhould expreſs the Sign or Name of the Houſe, &c. 297

Notice of Inquiry at the *Three Tons* in *Brook-ſtreet*, without adding *Holborn*, bad: So for want of adding the County, 299, 300

So the Town, 301

And it muſt be given to Attorney, and not Defendant, after Appearance has been entered, 300

On Order for ſhort Notice of Inquiry, or Trial, two Days is the leaſt, 301

Notice of Inquiry at Eleven good, if executed before Twelve, 302

The Nature of the Action muſt be expreſſed in Notice of Declaration; Notice of Declaration to one Defendant, when there are two, irregular, 246, 291, 293, 299

Notice of Declaration without Date bad, 295, 409

Declaration filed *de bene eſſe*, no Notice requiſite to Defendant's Attorney, on a bailable Action, *Page* 302

Notice to plead in four Days, inſtead of eight, bad, tho' Plaintiff ſtayed eight, 302

Notice to plead within the firſt four Days of *Michaelmas* Term, and the Days incluſive, 303

Notice of Declaration left under Door of empty Houſe, Defendant being ſerved there with Writ, held regular, 403

But put under a Latch without knocking, &c. irregular, 411

Declaration in Office in Time, Notice not delivered till after two Terms from Return of Writ, irregular, 291

Notice of Copy of Proceſs good on Appearance Day, but afterwards held it muſt be on Eſſoin-Day, 292, 293

If Return-Day on a *Sunday*, Notice to appear muſt be that Day, 293, 294, 295

Proceedings ſtaid on Variance of Name in Notice of Proceſs, 298

Notice to appear muſt be given with all Proceſs ſerved, and not helped by Plaintiff's entering Appearance, 242, 404

Notice of Proceſs directed to Plaintiff, inſtead of Defendant, faulty, 409

So for want of the Word, *next*, after Day of Appearance, 411

Proceedings ſtayed on Defect in Plaintiff's Affidavit of Service of Proceſs, 412

Iſſue of *Michaelmas*, Notice by Proviſo may be given of *Hilary*, 295

Eight Days Notice of Trial bad, Defendant living in *Ireland*, 297

Firſt Notice of Trial good, Second bad, Continuance good, yet irregular, 297

Notice of Trial can't, but Countermands may, be given in the Country, *Page* 298
Two Days Notice of Countermand ſufficient, 298
Altered 14 *Geo.* 2. *in Country Cauſes,* &c.
Defendant muſt give fourteen Days where Plaintiff ought, 299
After Notice is countermanded it cannot be continued at ſame time, 301
See **Amendment,** 308
Award, 57
Coſts, 307
Declaration, 227
Imparlance, 225, 226
Judgment, 271

Same Notice neceſſary of executing *Scire fieri* Inquiry as of an Inquiry of Damages, 304
Where Commiſſion-Day of Aſſizes was *Mouday*, and Countermand on the *Saturday* before, held regular, 305
Verdict ſet aſide for want of fourteen Days Notice of Trial, Defendant reſiding above forty Miles from *London*, 305
Notice of executing Inquiry given in the Country, good, 305
Notice of Trial given in the Country, good, 306
But where given on the Iſſue-Book, muſt be to the Agent in Town, *ibid.*
All Notices where the Party hath a known Attorney, muſt be given to the Attorney, or his Agent, and not to the Party himſelf, 306
Proceedings ſtaid, Notice on Proceſs being to appear on 27th of *October* next, inſtead of this inſtant *October*, 306, 308, 310
Where Defendant beyond Sea, and his Attorney dead, what ſufficient Notice, *Page* 307
Where there have been no Proceedings for a Year, a Term's Notice muſt be given, 307
This does not extend to Motions to end Proceedings, 308
Where the Attorney cannot be found, Notice may be ſerved on the Party himſelf, 307
Where neither Attorney nor Party can be found, the Court muſt be applied to, 307
Notice of Declaration ſerved on a *Snnday*, bad, and an Imparlance granted, 309
Notice of executing Inquiry muſt be certain as to the Place, 309
Proceedings ſtaid, Notice having been delivered after nine o'Clock, 310
Notice of Declaration left *de bene eſſe*, without indorſing the Declaration, not ſufficient, 310
Notice of executing Inquiry miſtaking Plaintiff's Name, bad, and Inquiry, *&c*, ſet aſide, 310
Notice of executing Inquiry before Judge of Aſſize, ſhould be general, and not for a particular Day, 135
Inquiry ſet aſide for want of fourteen Days Notice, though Defendant an Attorney, he living forty Miles from *London*, 264
Notice of Declaration left under Door of Defendant's Houſe, where good, 278
Judgment ſet aſide for a Defect in the Notice of Declaration as to the Nature of the Action, 498
Inquiſition ſet aſide with Coſts, for want of Notice of the Execution of Writ of Inquiry on Defendants *Attorney or Agent*. *N. B.* It

It was ſerved on Defendant himſelf, *Page* 311

Nul tiel Record. See **Iſſues**, 84, 335, 343.

See **Judgment**, 264, 274

Original.

See **Proceſs**, 416, 417

Outlawry.

ARREST on *Capias utlagat'* bad on a *Sunday*, 319
Outlawing a Man beyond Sea is Error, and not an Irregularity, 319
Superſedeas to the Exigent ſhould be delivered to the Sheriff before Return, 319
If Outlawry ſhould be ſued out for leſs than 10 *l.* 320
Tho' Defendrnt appears publickly, yet keeping out of the Way of Arreſt may be outlawed, 320

See **Bail**, 86
Judgment, 271

Proceedings on the *Exigent poſt Ca' ſa'* ſtaid, Defendant after the *Teſte* and before the Return becoming a Priſoner in the *Fleet*, 321
So in like Caſe Outlawry reverſed, without Payment of Coſts to Plaintiff, on Defendant's entring a common Appearance, 321
Defendant waived ſpecially on meſne Proceſs, as a ſingle Woman, after the *Exigent* and before the Outlawry, married, Court refuſed to interpoſe, *Page* 321
In caſe of a total Abſconding, no Endeavours to arreſt are neceſſary, 322
Capias, *Alias* and *Pluries* may be ſued out together, 322
On Proceſs to Outlawry no Affidavit for Bail is required, 322
Date to ſuch Proceſs not uſual, 322
Return of the Proclamations, where ſufficient, 322
After Return of the *Exigent*, but whilſt in the Hands of the Sheriff, a *Superſedeas* allowed on Payment of Coſts, 323
Motion to ſet aſide Outlawry after Judgment, for want of a Proclamation, denied, 323
Proceedings refuſed to be ſtaid, where Plaintiff died after the Day of Outlawry, but before the Return, 323
Motion for Outlawry to be reverſed at Plaintiff's Expence; Defendant's when *Exigent* iſſued, and ſtill being beyond Sea. 324
Diſcretionary in Court to relieve by Motion, or put Parties to a Writ of Error, 324
Outlawries in Treſpaſs *Quare clauſum fregit*, Defendants have a Right to reverſe at their own Expence, on entring common Appearances and Payment of Coſts, 324
What Coſts to be paid, *ibid.*
Capias utlagat' iſſued after Plaintiff's Death without Revival by *Sci. fac.* ſet aſide, 325
Outlawry commenced and proſecuted during Defendant's Reſidence in *Ireland*, reverſed without Bail or Appearance, 325
Court have a diſcretionary Power to reverſe Outlawries on Motion in a ſummary way for a viſible Defect,

fect, but will not exerciſe it but in a favourable Caſe for Defendant; if otherwiſe, will put the Party to bring his Writ of Error, *Page* 325, 326
Before a Defendant is returned outlawed, he may ſuperſede the Exigent, though founded on a ſpecial Original, but cannot after without Bail, who are bound to pay the Money without Power to render the Principal, 326
Proceedings on the Outlawry ſtayed on Payment of Debt and Coſts, *ibid.*

Oyer. Vide **Judgments.**

Defendant has the ſame Time to plead after *Oyer* delivered as he had at the Time it was demanded, 238, 254
Oyer demanded after Rule to plead out too late, no Stay of Judgment tho' Affidavit was not for Delay, 241, 329
If Defendant pleads with a *Profert* and *Oyer* demanded, Plaintiff may ſign Judgment, except given in a reaſonable Time, to wit, two Days, 245
Oyer of Original denied, 340

See **Judgment,** 5

Oyer muſt be demanded before Time for pleading expires, 268, 326
Where Oyer demanded, Defendant intitled to a Copy of the Whole, 327
Where Defendant craves Oyer, and has it, but makes it no Part of his Plea, Plaintiff may make up the Iſſue with Oyer, *Page* 327

Pauper.

Defendant not admitted to defend *in forma Pauperis*, 328

Pleadings. Vide **Judgmencs, Mutual Debts, Sci. Fa.**

Defendant may withdraw Special Plea and plead the General Iſſue the ſame Term before Replication, without Coſts, and tho' Plaintiff afterwards gets a Verdict, yet he can't have thoſe Coſts, 127
Plea of Judgment, *&c.* withdrawn, and *Plene adminiſtravit* admitted, 330
Plea of Tender not to be withdrawn and General Iſſue pleaded, 330
After *Non Aſſumpſit iufra,* *&c.* pleaded, Defendant may not add *Non Aſſumpſit,* 332, 338
After Demurrer by Bail, and joined, *Nul tiel Record* denied to be pleaded, 334
Demurrer withdrawn, and General Iſſue pleaded, Defendant having offered it before Aſſizes, 337
General Iſſue withdrawn, and Money paid into Court, in caſe of Miſtake by Death of Attorney, 344
Plaintiff's Demand being above 10 *l.* Defendant pleads a Set off; Proceedings in *Latin* good, tho' Damages under 10 *l.* 240

Plea with Notice to ſet off muſt not be delivered in the Country, *Page* 251

The *Alias Dict'*, if ſet out at all, muſt be in the ſame Language as in Deed, 241

On Declarations delivered in Country-Cauſes, and where Defendant lives above twenty Miles from *London*, eight Days time to plead, 244

Declarations may be filed *be bene eſſe*, 245

Declarations to be delivered before Nine, 247

Two Counts in Treſpaſs ſtruck out without Coſts, 335

So four Counts in Caſe, 344

Declaration delivered to Defendant bad, tho' his Attorney not to be found, 335

On Proceſs at the Suit of *A.* only, *A.* can't declare by the By at the Suit of *A.* and Wife, 337

Declaration in *Latin* on *Engliſh* Proceſs held good by the By, 340

Declaration to be delivered in two Terms after Defendant is in Court, 340

Three Declarations in Aſſault, &c. againſt three reduced into one, 341

One Declaration for an Aſſault, and another for taking Plaintiff's Goods, not united, 342

Declaration *de bene eſſe* not to be delivered after Time out for Appearing or Bail, 342

Over-ruled ſince.

Declaration not to be put under Country Attorney's Chamber-Door, 342

Plaintiff obliged to inſert true Day of filing Bill, 343

On a *Certiorari* returned, and Proceedings at Iſſue, Plaintiff ſhall declare *de novo*, 345

Quare cum in Treſpaſs helped by Recital in original Proceeding, after Verdict, *Page* 249

In real and mixt Actions, except *Replevin*, a peremptory Rule to plead is given, 260

Plea of Tender without bringing the Money into Court is a Nullity, 252

After Order to plead an iſſuable Plea, a Tender to Part, and *Non aſſumpſit* to Reſidue, is a Nullity, 252

And if Judgment ſigned, and the Benefit of an Aſſizes loſt, it ſhall not be ſet aſide on Terms, 254

Nil debet to a promiſory Note, a Nullity, 257

So Plea by Attorney of another Court, 259

So Plea in Abatement after Rule's out, 331

Tender not to be pleaded after an Order for Time, 337

Leave to plead a Tender after General Imparlance may be in firſt four Days of next Term. 343

On a Plea in Abatement, Plaintiff may enter a *Nil capiat per breve* without Leave; otherwiſe in other Caſes, 257

In Formedon, Defendant never Tenant to the Freehold muſt be pleaded in Abatement, 332

No Plea in Abatement without procuring Special Imparlance, after a General Imparlance, 334

Plea in Abatement as to Commorancy may be demurred to, but can't be ſet aſide, 338

Affidavit to Truth of Plea in Abatement by Attorney, ſufficient, 344

Non aſſumpſit, and a General Releaſe, not to be pleaded jointly, 328

So *Liberum tenementum*, and a Juſtification, *Page* 329
So Not guilty, and Accord and Satisfaction, 329
So *Non aſſumpſit* and *Plene adminiſtravit* without Affidavit of having fully adminiſtred, 332
So *Solvit ad diem* and *Riens per Deſcent* without Affidavit, 332
So *Non aſſumpſit* and ſeveral Matters ſet off againſt Plaintiff's Demands, 333
So *Nil debet* and *Nil habuit in tenementis*, 333
So Not guilty and a Juſtification in Treſpaſs, 339
So *Non aſſumpſit* and *Non aſſumpſit infra ſex annos*, after Money paid into Court, 338
Leave given to plead Not guilty, and *Liberum tenementum*, 336
So in Replevin that Plaintiff has no Property, and a Juſtification, 338
So Damage-feaſant, and under a Demiſe from Defendant to Plaintiff, 339
So a Diſtreſs for Damage-feaſant and Rent in Arrear, 340
So *Solvit ad diem* and a mutual Debt, 340
So *Non aſſumpſit* and a Diſcharge under the Debtors Act, 343
So *Non eſt factum* and ſuch Diſcharge, 343
So *Non aſſumpſit* and *Non aſſumpſit infra ſex annos*, 329
Defendant may move to plead double after Rule to plead is out, and before Judgment, 329
Rule to plead double diſcharged, Defendant not having appeared, 331
Defendant may plead double after Order to plead iſſuable Plea, 338
After Order to plead an iſſuable Plea, a Judgment on a Bond ſince Order may be pleaded, *Page* 330
After Order for time to plead to Iſſue, further time till a former Judgment perfected refuſed, 333
On Points reſerved Plaintiff's Council begin the Argument, 155
General Iſſue to be delivered in Form and on Duty, 239
Judgment ſigned becauſe Defendant pleaded an Outlawry in Bar, and not *Sub pede ſigilli*, held irregular, 241
A bad Juſtification in Treſpaſs, Verdict for Defendant, yet Judgment for Plaintiff, 255
Plea of Bankruptcy muſt conclude to the Country, 330
In Ejectment, Motion to plead Antient Demeſne muſt be in firſt four Days, 331, 336
Plea of Coverture ſet aſide, Defendant pleading by her Name in the Declaration, 334
Judgment arreſted, *Non aſſumpſit* being pleaded in Trover, 439
So on *Non eſt factum*, Action being brought by Adminiſtrator of an Executor; there ſhould have been an Adminiſtration *De Bonis non*, 444
Theſe Words (*this Child can hang you*) not actionable, 480

See **Amendment**, 27. 15, 19, 20, 22
Bail, 92
Coſts, 129, 136, 140, 141, 143, 144
Demurrer, 162, 168
Imparlance, 225, 345
Judgment, 15, 263, 267, 271, 272, 273, 275, 276, 303

Money into Court, *Page* 286, 287, 349, 350, 362
Oyer, 268, 326
Trial, 457
Venue, 492

Plea *Puis darrein Continuance,* 345
Leave to withdraw the General Iſſue, and plead Special Juſtification, granted upon Payment of Coſts, 346
Claim of Cognizance comes too late after Plea pleaded and Replication tendering an Iſſue, 346
Leave for Defendant to withdraw his Avowry, and avow Property in a Stranger, 348
Plea in Abatement ſet aſide, both the Plea and Affidavit to verify it being wrong intitled, 348
Leave to withdraw Plea of Tender, plead General Iſſue, and pay Money into Court upon the common Rule, denied, 349
Leave to plead a Tender after the firſt four Days, where granted, 351, 353, 354, 357, 359, 361, 362
Cepit in alio Loco is a Plea in Bar, and not in Abatement, 353
In Covenant, General Performance of Covenants not an iſſuable Plea under Judge's Order, and ſet aſide, 354
Too late to plead a Tender after a General Imparlance, 354
Coverture, where not a good Plea in Abatement, 355
Leave to plead ſeveral Matters muſt be given by the Court, it cannot be done by a Judge's Order, 357
Defendant pleads a Tender, Plaintiff replies, and afterwards takes the Money brought in, and enters an Acquittal; held he could not enter an Acquittal without Application to Court and Payment of Coſts to Defendant, *Page* 357
On Motion to plead double, unleſs *prima facie* the Pleas appear to be frivolous, the Court will not conſider whether they are material or not; Plaintiffs may demur, 359
Difference between Pleading *Non Aſſumpſit* and *Non Aſſumpſit infra ſex Annos*, as to the Evidence which may be given under them, 361
Leave to plead Ancient Demeſne, on Affidavit that the Premiſſes in Queſtion were reputed to be ſuch, 185
Ancient Demeſne muſt be pleaded within the firſt four Days of the Term, 187
All Pleadings ſhould be entered according to the Truth of the Term of which they were, 347
Rule to reply ſeveral Matters denied, Courts have never conſtrud Statute of 4 & 5 *Ann.* to extend to other Pleadings than Pleas, 363
Leave to plead three Matters in Replevin, *Non cepit*, Property in another Perſon, and *Liberum Tenementum*, 364
Leave to plead doubly *Ne unques Exor'*, and *Plene Adminiſtravit*, 365
Replication ſet aſide for want of Serjeant's ſigning; wherever Plea ſo ſigned Replication muſt be ſo alſo; what Pleas good without, 365
Leave denied to plead ſeveral Matters in Action on *Stat.* 9 *Anne*, for Money won at Play, Actions on penal Statutes *not being within* 4 *Anne*, for the Amendment of the Law, 365
In Replevin, Leave to plead *Non Cepit*, and to avow the taking,

like, Not Guilty, and a Juſtification in Treſpaſs, *Page* 365

In ſpecial Action on the Caſe, Leave to plead *Non Aſſumpſit*, a Tender, and a Set-off, 366

In Treſpaſs, Leave to plead Not Guilty, and a Tender of Amends, 366

Double Pleas allowed.

See **Money into Court**, &c. 10, 14, 17

Plene Adminiſtravit and a Set-off, without an Affidavit, 347

So *Non Aſſumpſit* and *Plene Adminiſtravit*, without Affidavit, 348

Not guilty, and a General Releaſe, 272

Not guilty, and 4 *l.* 4 *s.* paid Plaintiff in Satisfaction of all Treſpaſſes to ſuch a Time, 349

Ne unques Executor, and *Plene Adminiſtravit*, 275, 286

Non cul', *Son Aſſault demeſne*, and *Molliter Manus impoſuit*, on Affidavit, Rule abſolute to plead firſt and laſt, 352

Non eſt factum and *Ne unques Executor*, 279

Non cul' and *Son Aſſault Demeſne*, on Affidavit, 352

Not guilty, *Son aſſault demeſne*, and Satisfaction for all Treſpaſſes, 352

Non cul', *Son Aſſault demeſne*, and *Molliter Manus impoſuit*, 355

Not guilty, and a Juſtification, 355, 356

Non eſt factum and Dureſs, 359

Non Aſſumpſit, a Sett-off, and a Tender as of laſt Term, 360

A Tender of Money to the firſt Count, and *Non Aſſumpſit* to the Reſidue, 362

Non aſſumpſit by the Teſtator, a general *Plene adminiſtravit* and a Special *Plene adminiſtravit*, *Page* 363

In Treſpaſs, Aſſault and Battery, Not guilty and Licence, 364

Double Pleas not allowed.

In *Quare Impedit*, Rule to ſhew Cauſe why Defendant ſhould not plead nine different Matters, denying all the Matters in the Declaration, diſcharged, 350

Non cul', and *Liberum Tenementum*, denied, it not being neceſſary; and in what Caſes it is neceſſary, 350

Not guilty, and a Licence, without Affidavit, denied; and where Affidavits neceſſary or not, 351

Not guilty, and a Releaſe of a particular Treſpaſs, never granted, 351

Stat. 4 *Ann.* for pleading double does not extend to Suits where the King is a Party, unleſs for Debt immediately owing, 15, 353

Not guilty, and a Tender, denied, 359

In Trover, Not guilty, and that Plaintiff became a Bankrupt, and his Effects were aſſigned, denied, 360

Non aſſumpſit and Infancy, 363

Non eſt factum and *Solvit poſt Diem*, *ibid.*

Pledges.

See **Declaration**, 162

Poſtea.

See **Amendment**, *Page* 449

Priſoners.

Defendant arreſted on a *Latitat* in *B. R.* removes himſelf to the *Fleet*, no new Affidavit requiſite to charge him with Declaration, 75

Priſoner on a *Capias utlagatum* diſcharged on Plaintiff's Death, &c. 366

After *Superſedeas* iſſued, Plaintiff ſhall not charge Defendant with new Declaration, and Q. if after at Liberty, Defendant may be arreſted, 368, 499

Defendant not to be charged in Execution after three Terms ſince Judgment; but Q. if *Superſedeas* not lodged before *Ha. Cor.* 369, 379

Priſoner to be brought up to Court only twice, tho' Plaintiff dies and Executor wants Time, &c. 370

After a voluntary Eſcape, Gaoler can retake Priſoner, 373

Defendant diſcharged by the Lords Act can't be retaken on Execution or new Action, 374

Order for *Superſedeas*, after Judgment, Defendant may not afterwards be taken in Execution; Defendant diſcharged with Coſts. (*Vide infra.*) 375

Defendant diſcharged by *Superſedeas* *before* Judgment, may afterwards be taken in Execution; otherwiſe if *Superſedeas* after Judgment. (*Vide ſupra.*) *Page* 376

Priſoner (*inter alia*) on *Capias utlagatum* diſcharged on *St.* 10 *Geo.* not to be taken again on new *Capias utlagatum*, 378

Plaintiff muſt proceed to final Judgment within the third Term after Declaration incluſive, 379

So for want of getting Demurrer argued in third Term, 383

If Defendant at large, Q. if can plead before Appearance, 379

Priſoner not charged till after ſecond Term by Accident, yet not diſcharged, 380, &c.

If Priſoner eſcapes, his Recaption ſhall be looked on as the Time of Render, from whence Plaintiff is to proceed, 382

Application for a *Superſedeas* and to be diſcharged on Lords Act inconſiſtent, 383

Bankrupt ſurrendered after Judgment, diſcharged, 368

Declaration delivered to a Priſoner the laſt Day but one in *Eaſter* Term; Rule out two Days before the Eſſoin-Day of *Trinity*, 224

Declarations againſt Priſoners in County-Gaols may be filed any time before Rule to plead, 372

Defendant ſurrendered to Warden of *Fleet* on Fugitive Act, not to be charged with Declaration, 380

The Original Declaration againſt a Priſoner in the *Fleet*, indorſed by Prothonotary, ſhould be left at the *Fleet*, and not Copy, 434

Tho' Allowance was forgot for a Day or two, yet Priſoner not diſcharged, 367, 369

If Priſoner removes himſelf, he loſes his 2 *s.* 4 *d.* a Week, 368

Attorney's ſigning a Note for 2 *s.* 4 *d.* a Week, not ſufficient, 371

So tho' Affidavit of Plaintiff being beyond Sea, *Page* 382

In Caſe of Plaintiff's Death after Allowance, Rule *Niſi* on Executor to diſcharge Defendant for Non-payment, 373

Priſoner detained in Execution by Two, each muſt allow 2 *s.* 4 *d.* a Week, 377

Rule for Diſcharge on Non-payment of 2 *s.* 4 *d.* undertaken before Judge at Aſſizes, 382

Priſoner charged for 103 *l.* not diſcharged tho' 42 *l.* was ſaid to be paid; Rule for Plaintiff to endorſe what was due, he endorſes the Whole, Court will not require further, 367, 369

On Affidavit of 21 *l.* only due, tho' charged for 100 *l.* Rule *Niſi* to be diſcharged on Payment of 21 *l.* and Coſts, 371

Priſoner charged with 33 *l.* only, diſcharged as to that Plaintiff, tho' after his Petition he was charged by another for 182 *l.* 381

Objections to Form of Priſoner's Schedule to be made at his firſt coming up, 372

Priſoner muſt apply before End of firſt Term after taken in Execution, 378

Rule *Niſi* to diſcharge Priſoner to to be ſerved on Plaintiff's Attorney, Plaintiff abſconding, 384

Quaker refuſing to Swear not to be diſcharged. *Alter'd by Stat.* 367

See **Attorney,** 46, 263
  Habeas Corpus, 222, 223, 384. 20
  Outlawry, 321
  Superſedeas, 499

Where Priſoner arreſted by *B. R.* Proceſs is removed immediately to the *Fleet*, Application for *Superſedeas*, where Plaintiff does not declare in Time, muſt be in this Court, *Page* 384

Priſoner in the *Fleet* by Proceſs of this Court may be brought up by Rule, but if held by Execution of another Court, there muſt be a *Habeas Corpus*, 385

Priſoner at the King's Suit brought up by *Habeas Corpus* cannot be committed to the *Fleet*, without the King's Conſent, 385, 388

Priſoner a Bankrupt taken in Execution for a Debt accrued before Bankruptcy, diſcharged, 386

Where Defendant intitled to *Superſedeas* for want of being charged in Execution, 386, 389, 390, 397

Day-Rule for Priſoner and a Tipſtap to take him to *H.* to treat with his Creditors, denied, 386

Court may moderate the Allowance to Priſoners under the Lords Act; Priſoner remanded on an Allowance of 6 *d. per* Week, 387

But where once determined at 2 *s.* 4 *d.* cannot afterwards be lowered, 397

Where Priſoner intitled to *Superſedeas* for want of Declaration in two Terms, 387, 391, 396, 397, 398

Priſoner diſcharged by the Lords Act, being charged in Execution on a ſecond Judgment by the ſame Plaintiff, diſcharged again on a ſecond Aſſignment of the ſame Effects, 388

Motion by Defendant to ſtay Proceedings after Inquiry executed, Plaintiff having been diſcharged by Inſolvent Debtors Act, and aſſigned his Debts, &c. to his Creditors, 389

Priſoner remanded on a joint Allowance of 2 *s.* 4 *d. per* Week by two Creditors, *Page* 389

Where Priſoner intitled to *Superſedeas* for want of Plaintiff's proceeding to final Judgment, 384

Where, on Service of peremptory Rule, Sheriff brings the Body into Court inſtead of putting in Bail above, how Court proceeds, 392

Declaration and ſubſequent Proceedings, which were as if Defendant was at large, ſet aſide, he becoming a Priſoner after Proceſs ſerved, 392

Priſoner charged with a common *Capias*, and not with a Declaration, where regular, 392

Where a Priſoner is ſuperſeded, he cannot be held to Bail for the old Cauſe of Action, 393

Priſoner charged twice in Execution by the ſame Plaintiff, on Motion allowed to pay Principal, Intereſt and Coſts on the firſt Judgment, to avoid giving up his Eſtate according to Inſolvent Debtors Act, 393

Priſoner's Petition to the Court to be carried to the Aſſizes to be diſcharged under the Lords Act, when to be preferred, 394

Priſoner, how and where to be diſcharged under the Lords Act, 394

Priſoner having been ſuperſedable for two Years paſt, for want of Plaintiff's proceeding to Judgment, remanded uncharged in Execution, but detained at others Suits, 395

Note to Priſoner for his Allowance under the Lords Act, muſt be ſigned by Plaintiff himſelf, one from the Attorney has always been refuſed, 399

Defendant Priſoner for want of Bail to Action brought in inferior Court, diſcharged on a common Appearance, Plaintiff having removed his Action here by *Certiorari*, *Page* 399

What is meant by the common Rule againſt the Sheriff where he takes a Bail Bond, 400

What where Defendant remains in Cuſtody for want of Bail, *ibid.*

Declaration, Judgment and Execution againſt a Priſoner ſet aſide as irregular, being all ſubſequent to the Time of Defendant's being ſuperſedable and his having applied for a *Superſedeas*, 400

Priſoner refuſed to be diſcharged, Plaintiff making Affidavit that the Debt was not due till the 1ſt of *January* 1755, the Day in the Inſolvent Act, 401

Two Defendants, one in *Fleet*, Proceſs of Outlawry taken out againſt the other; Court will give Plaintiff a reaſonable Time to declare that he may Outlaw the abſconding Defendant, 401, 402

Superſedeas for want of Declaration in *C. B.* within two Terms; Declaration of *B. R.* againſt a Priſoner in the *Fleet*, null and void, 402

Where the Fund in the Hands of an Aſſignee of the Eſtate and Effects of an Inſolvent Debtor is legal Aſſets, Judgment Creditors muſt be preferred to Bond Creditors, *&c.* but where equitable Aſſets, all muſt be paid, *pari paſſu*, 402

An Equity of Redemption equitable Aſſets, *ibid.*

Common Appearance and *Superſedeas* ordered, Plaintiff's Cauſe of

Action being as Indorſee of a Promiſſory Note, whereon Defendant had been ſued by the Indorſor, ſame in the other Action, *Page* 403

Privilege.

See **Attorney**, 42, 44
Bail, 110

Proceſs. Vide **Notice.**

The Writ need not be ſhewn at Time of Service, 302
Copy put thro' the Crevice of a Door to Defendant, who was acquainted with the Contents, held good Service, 405
Affidavit of Serving Defendant with Copy of a Writ (except what related to other Defendants) not ſufficient, 405
Service of Proceſs on Huſband only (tho' againſt Huſband and Wife) good for both, and on Affidavit Appearance may be entered by Plaintiff for both, 406, 412
Teſtatum Capias, and not Chancellor's Mandate, to be ſerved in County Palatine, 406
Proceſs, dated 26 *June*, ſerved on 16, irregular, 408
Special Original againſt Adminiſtrator ſerved on him amounts only to a Notice, and Plaintiff muſt proceed by a *Capias*, *&c.* or *Pone*, *&c.* 410
Proceedings not to be ſtayed, tho' Perſon ſerved in a Liberty not by the proper Officer, but Party may bring his Action, 404
So tho' Attorney's Name is not to Sheriff's Warrant, 412
So tho' Writ not directed to Sheriff of any County, *Page* 404
So tho' Attorney's Name not to Copy of Proceſs, 407
Proceſs ſerved on a wrong Perſon not helped by Plaintiff's entring Appearance according to Statute, 406
Capias teſted in Vacation, void, and Proceedings ſtaid, 407
The Want of fifteen Days between Teſte and Return, no Irregularity, but Error; otherwiſe in Caſe of Attachment, 409, 410
Capias teſted the 9th inſtead of 10th of the King, irregular, 409
Plaintiff may proceed the old Way by Original, *Pone*, *&c.* 407

See **Appearance**, 163, 167, 415, 424
Bail, 104
Ejectment, 183, 185, 188
Judgment, 269
Notice, &c. 306, 308, 310
Outlawry, 322

Ca' ſa' againſt Attorney returnable at a general Return, and not a Day certain, quaſhed, and Defendant diſcharged by *Superſedeas*, with Coſts, 413
Motion to ſtay Proceedings, the Name of Plaintiff's Attorney not being ſet upon the Sheriff's Warrant, denied, 414
Capias ad' reſpond', and Proceedings thereon againſt Defendants in a Corporate Capacity, ſet aſide, they ſhould be ſued by *Pone* & *Diſtringas*, 415
Proceedings ſtaid, no Attorney's Name being ſet upon the Copy of the Proceſs ſerved on Defendant, 415

Proceedings ſtaid, Proceſs being ſerved on the Return-Day to appear that Day, *Page* 415

Special Original ſued out in *Lincolnſhire*, Plaintiff declared in *Middleſex*, Rule to ſhew Cauſe why Proceedings in *Middleſex* ſhould not be ſtaid, diſcharged, Defendants having taken the Declaration out of the Office, and thereby waived former Proceedings, 416

Rule for the Bailiff of the Dutchy to return Sheriff's Mandate, diſcharged, the Warrant being directed to Officers of Plaintiff's Nomination, and not thoſe of the Bailiff, 416

Motion to quaſh *Non omit' Capias*, for that it recited a Mandate by Sheriff to the Bailiff of a Liberty, without naming it, but leaving a Blank for it. Objection good, but Rule denied, Bail having been put in, 416

Rule for Sheriff to return the Writ, diſcharged, Defendant being protected by a Publick Miniſter, and the Protection regiſtered, 417

Where Original has been once executed, though improperly, it cannot afterwards be made uſe of for any other Purpoſe, 417

Iſſues on *Diſtringas's*, how increaſed, 418, 420, 421, 422

Infant, though Proceſs ſerved with Notice to appear by Attorney, compellable to appear by Guardian in all Cauſes of Action not bailable, 418

Proceedings ſtaid, Copy of Proceſs ſerved, being uncertain as to the Time of Appearance, 419

Proceedings ſet aſide, with Coſts, againſt Plaintiff's Attorney, for ſuing out *Teſtat' Cap'* from *Suffolk* into *Kent*, inſtead of *Cap'* into *Kent*; *Page* 419

Rule to ſtay Proceedings, the Date of the Writ being omitted, 420

Proceedings ſtaid, *Capias* being returnable before King's Juſtice, and there being only ſix Days between *Teſte* and Return, 420

In Ejectment, *Habeas Corpus* proper Proceſs to remove Plaint from Mayor of *London*'s Court; a *Certiorari* which had iſſued, quaſhed, 421

Copy of Proceſs ſent by Letter, held to be good Service by Defendant's opening the Cover and taking out the Copy, 422

There is no occaſion to ſhew the original Writ at the Time of Service, 422

Proceedings ſtaid, Proceſs ſerved within the Cinque Ports being directed to the Sheriff of *Kent*, inſtead of *Teſtat' Capias* to the Conſtable of *Dover-Caſtle*, 422

Rule for the late Sheriff of *D.* to return a Writ of *Capias*, diſcharged, it not having been carried to Sheriff's Office till a Year after it was returnable, 422

Rule for Leave to Plaintiff to take out a ſeparate Attachment of Privilege, to warrant his Judgment againſt Defendant only, *nunc pro tunc*, agreeable to a joint Attachment againſt him and others, denied, as unneceſſary, 423

Defendant, an Attorney, moved to ſet aſide Proceedings, he being ſued by *Capias*, but denied, he having appeared, which cured the Miſtake, 424

Rule on Sheriff who abſconded, how ſerved, 35

The Rules of *Eaſter* and *Michaelmas*, 3 *Geo.* 2. extend to all Proceſs

Proceſs returnable the firſt or ſecond Return, without Exception as to an *Exigent*, or any other particular Proceſs, *Page* 271
Copy of Proceſs being tendered Defendant at his Houſe, and he refuſing to accept it, held leaving it there was good Service, 278
Fieri facias and Execution againſt an Attorney ſet aſide without Coſts, for Irregularity in the Writ, 424
Proceeding ſtaid Proceſs being ſerved on the Return Day, 424
Sheriffs of *London* return on a *Ca. Sa.* That Defendant's Name was regiſtred as a Domeſtic of a Foreign Miniſter, Court will not order them to make a better Return, if inſufficient, Plaintiff may apply for Attachment, 425
Notice on the Copy of a Writ ſerved to appear at the Return, being the 26th of *June*, without ſaying *Inſtant*, next, or 1757, ſufficient, and former Doctrine on this Subject exploded, 425
Teſte of a Writ of Inquiry without Day or Year added, if ſufficient? Court refuſed to ſet it aſide for that Cauſe, or to amend it, 425
In Replevin the Writ of ſecond Deliverance not taken away by 11 *G.* 2. and is no *Superſedeas* to the Writ of Inquiry of Damages, *Stat.* 17 *Cha.* 2. *c.* 2. intended to prevent Delay, and give Party a better Remedy, 426
Capias ad Reſpondendum ſet aſide without Coſts as irregular, for want of 15 Days between the *Teſte* and Return, 427

Prohibition.

Affidavit that the Copy of the Libel is a true one, is neceſſary, *Page* 427
Unleſs a Civilian can be got to argue for the Prohibition, none ſhall be heard againſt it, 428

See **Coſts**, 129, 130, 138

The Time for proving the Suggeſtion, (where Declaration ordered to be amended) is to be computed from the Amendment, 428
See **Coſts**, 148

Protections.

Defendant protected by Baron *Hoffman* as his menial Servant; but being a Juſtice of Peace, and not his domeſtick Servant, not free from Arreſt, 370
So Defendant being a Trader, and Envoy at *Hanover*, 374

Quare impedit.

See **Coſts**, 139
Double Pleas not allowed. 350

Recognizance.

See **Bail**, 96, 207, 104, 106
Bail in Error, 103, 194

Record.

Record.

See **Amendment**, *Page* 14
Trials, &c. 464, 466

Re. fa. lo.

See **Replevin**, 222

Remanet.

See **Jury**, 449, 461

Replevin.

See **Coſts**, 141, 144
Declaration, 353
Diſcontinuance, 171
Nonpros, &c. 314, 317
Trial, 451, 458

Proceedings ſtaid on Payment of the Rent diſtrained for, and Coſts, after Declaration but before Avowry, 429

In Replevin, the *Re. fa. lo.* is filed by the Filazer, in all other Actions by the Prothonotary, 222

Reſcous.

Writ of *Reſcous* containing alſo a Continuance againſt Defendant, a good Form. 429

Reſcous returned is not traverſable, and if Reſcuers are taken they muſt be brought into Court to be fined, 429

Reſcous, a bad Return on a *Fi. Fa.* *Page* 430

Reſcuor taken, permitted to enter into a Recognizance to try an Action of falſe Return againſt Sheriff, 430

And on a Verdict for Plaintiff, Recognizance diſcharged, 430

Rules.

See **Executors**, &c. 210
Priſoners, 385, 386
Proceſs, 271
Trial, 451, 459
Warrant of Attorney, 47

In Rules for entering Iſſues the Day of Notice is excluſive; and Nonpros ſigned a Day too ſoon, ſet aſide, 318

Obſervations on ſeveral Rules, *&c.* 414

Rule, where Record made up, and Trial had, without Replication to or Notice taken of a fourth Plea of Defendants, 465

Scire facias.

IN a *Sci. Fa.* to revive a Judgment, the Term of the Recovery need not be inſerted, 431

Sci. Fa. quaſhed on Plaintiff's Motion without Coſts, tho' after Appearance, 431

In *Sci. Fa.* againſt Bail, ſetting forth, altho' Plaintiff recovered Judgment, without averring he did recover, ſufficient, 431

So tho' Recognizance was at the the Suit of *J. M.* and the Judgment was *J. M.* jun. good on Demurrer, 431

See **Bail**,
Bail in Error,
Executions,

Where the Record of the Judgment is not tranſcribed into *B. R.* the *Scire facias* out of this Court is regular, *Page* 206, 432
After Tranſcript it ſhould go out of *B. R.* *ibid.*
Two *Scire facias's* quaſhed, the *Ca' ſa'* againſt Principal and firſt *Scire facias* bearing *Teſte* on one and the ſame Day, 95
Scire facias againſt Bail, in what County to be brought, 96, 207

Sheriff. Vide Attachment, Priſoner.

Rule to bring in Body ſhall be diſcharged, if Defendant hath continued in Cuſtody ſince Arreſt; otherwiſe if Eſcape, 32, 381
Bail taken by Sheriff were then good, but afterwards became inſufficient; Sheriff muſt put in good Bail,
Sheriff ſhould put in Bail on Rule to bring in the Body in Six Days, elſe muſt pay Coſts, 80
On a Writ of falſe Judgment, unleſs Sheriff's Fees are paid, he may execute a Writ *de Executione Judicii*, 129
An Aſſignment of Priſoners by Under-Sheriff to next Sheriff, good without Indenture, 367
Service of Rule for Attachment againſt Sheriff, good on Under-Sheriff, 405
Sheriff muſt return Writ, tho' made to Plaintiff's own Bailiff, 411

Sheriff's Officers, &c.

See **Attachment**, *Page* 34
Bail, 107
Inquiry, 231
Priſoners, 392
Proceſs, 416, 417, 422, 35
Rules, 414

Sheriff ordered to pay the Coſts of Application againſt him, Bail not being perfected till after Plaintiff was intitled to come for an Attachment, 98

See **Bail**, 110

Soldiers and Seamen.

An Out-Penſioner of *Chelſea* Hoſpital not conſidered as a Soldier, 432
Where original Cauſe did not amount to 10 *l.* but with the Coſts did, Soldier may be arreſted on Judgment: *Now altered by Stat.* 13 *Geo.* 2. 432, 433

See **Bail**, 95

Summons and Orders of Judges.

Tho' Defendant's Attorney don't attend Summons, Judgment can't be ſigned till Summons diſcharged, 240, 255
Summons after Rule to plead out, no Stay, and Judgment may be ſigned, 241, 252, 254

See

See **Amendment,** 15
Judgment, 263, 265, 266, 271, 168
Pleadings, 357
Venue, 489

A Judge's Summons ſerved after Rule to plead, *&c.* is out, held no Stay of Proceedings, 273

Superſedeas.

See **Error,** 205, 209
Outlawry, 323
Priſoner, 384, 386, 389, 390, 397, 387, 384, 395

Defendant Priſoner, after Judgment brought Error, put in Bail, and applied to be diſcharged on *Superſedeas*, which was granted; and held, Bail would be liable though Writ ſhould be nonproſſed for want of tranſcribing, 499

After *Superſedeas* ordered for want of Judgment, Plaintiff charged Defendant with a new Declaration for a different Cauſe of Action, and held regular, 500

Where Declaration againſt a Priſoner wanted Amendment, not granted, unleſs Plaintiff conſented to a *Superſedeas* within ſix Days after Term, 500

See **Priſoner,** 400

Trials. Vide Verdicts, Motions, Variance.

VERDICT being Right in Part can't be ſet aſide tho' contrary to Evidence, ſo in Caſe of Variance, *Page* 317, 318, 333, 6, 436, 475

In Treſpaſs Not guilty to Part, and a Juſtification to Part, Merits on Juſtification for Plaintiff, and 5*s.* Damages: No Evidence on the Not guilty, General Verdict not to be ſet aſide, 154

Judge of *B. R.* reſerved a Point at Aſſizes, and deſired the Opinion of the Judges of the *C. P.* who were of Opinion for Defendant, and ordered the *Poſtea* to his Attorney, 435

If Affidavit of Jurymen's Confeſſion of toſſing up Croſs or Pile for their Verdict, be ſufficient to ſet it aſide, 438

Verdict not to be ſet aſide, tho' ſome of the Jury left the reſt for ſome time; ſo tho' they eat and drink, unleſs at either Party's Expence, 441

After Motion in Arreſt of Judgment, Party may move to ſet aſide Verdict on new Matter diſcloſed to him ſince the firſt Motion, elſe to be moved in the firſt four Days, 328, 441, 443

Verdict ſet aſide for Jury's caſting Lots, 441

If Nonſuit ſet aſide, a View being only had by three Jurors, 443

Verdict on *Riens per deſcent* that there were Lands ſufficient, *&c.* but did not ſet out the Value, held good, 444

If the Verdict is objected to in Point of Law, Verdict not to be ſet aſide for Variance, *Page* 445

Tho' Verdict contrary to Evidence, yet it being a hard Caſe no new Trial granted, 435

New Trial denied, (tho' Judge's Certificate that Damages 50 *l.* were exceſſive) it appearing that

Plaintiff had been impriſoned and tried for Felony, *Page* 436
New Trial denied on Affidavit of material Witneſſes abſent, 439
But Judge certifying the Strength of the Evidence was contrary to Verdict, new Trial granted, 439
Where Title is in Diſpute, and Verdict for Defendant, no new Trial, unleſs the Revenue is concerned, 440
Verdict for Plaintiff, on Motion for new Trial, Court divided, Plaintiff may ſign Judgment, 442
A Trial denied to be put off, tho' a third Perſon ſwore *A. B.* was to his Knowledge a material Witneſs, 437
So Affidavit by Defendant's Wife of her Belief only, 437
In *Eaſter* Term Trial put off till *Michaelmas* on Affidavit that Witneſs was not expected back till *Augueſt* next; *ſed Q.* 440
If Witneſs goes out of Town after Notice of Trial given, not to be put off, 442
Action for ſcandalous Words. General Affidavit of Abſence of Witneſs ſufficient, 442
Trial at Bar ordered on Defendant's Affidavit of twenty Witneſſes, and Damages laid at 50,000 *l.* Plaintiff having Liberty to examine a Witneſs before a Judge, and Defendant waiving his Privilege of Parliament, 438
See **Coſts**, 133
Money into Court, 283
Notice, &c. 305, 306
On Motion for a new Trial, held, that an Highway ought not to be given in Evidence under the General Iſſue, but to be pleaded ſpecially, 446
Trial at Bar, where, and for what Reaſons granted, or not, 447, 455
Leave to examine an ancient Witneſs before a Judge upon Interrogatories, cannot be without Conſent, *Page* 447
Where Trial before Judge of another Court, on Motion for a new one, an Affidavit of what paſſed at the Trial muſt be produced, 447
Affidavit for putting off a Trial for want of a material Witneſs, may be made by a third Perſon, 448
What required to be ſet forth in the Affidavit, 448, 452
New Trial granted, as well where Damages are leſs, as where greater than they ought to be, 448, 455
Held, that the *Poſtea* in a former Action produced by Aſſociate, was ſufficient Evidence to prove that ſuch former Action was tried and referred, 449
In Replevin, Evidence offered by Plaintiff of giving Notice, with his Plea in Bar, to ſet off a mutual Debt againſt the Rent, held to have been properly rejected by the Judge of Aſſize, 450
The Entry of Judgment on the Verdict ſtaid, Defendant, on Plaintiff's Proſecution, having been convicted of Bigamy, and this Action merged in that Felony, 450
Proceedings ſet aſide after Trial of ſeveral Iſſues, and a Verdict for Plaintiff, the Goods diſtrained having never been replevied, and by Conſent, Plaintiff declaring in this Court, without *Re. fa. lo*, or Appearance, 451
How the Rule of *Niſi prius* to be drawn up, where a Point is reſerved for the Opinion of the Court, 451, 459

Action of Treſpaſs for aſſaulting, beating and wounding Plaintiff's Mare, Verdict for Plaintiff; in Arreſt of Judgment objected, this Action is not applicable to a brute Beaſt, but over-ruled, *Page* 452

Want of Certainty in the Declaraon, where aided after Verdict, 452

On Point reſerved at Trial of Action on a Promiſory Note, held, that the Words *Pay the Contents*, *&c.* may be put over the Name indorſed, in Court, 453

Verdict ſet aſide, one Perſon having anſwered to another's Name, and been ſworn as a Juror, 453, 455

Motion to ſet aſide Verdict, becauſe one of the Jurors Chriſtian Name was *Harry*, and not *Henry*, as in the Panel, denied, 454

Whenever a Point is reſerved for the Opinion of the Court, the Verdict muſt always be for the Plaintiff, 455

In Action of Treſpaſs for meſne Profits, brought by the Nominal Plaintiff againſt the Tenant in Poſſeſſion, after Judgment by Default againſt the Caſual Ejector, for want of the Tenant's Appearance, what ought to be proved, 456

Verdict ſet aſide, Plaintiff's Replication being bad, and he having proceeded to Trial, after Notice given him of it by Defendant, who made no Defence, 457

On a View, what may be ſhewed to the Viewers, and what the Shewer may ſay to them, 457

In Replevin, Defendant brought down the Record, and Plaintiff not appearing, inſiſted to have a Verdict, which Judge complied with; but Court ſet aſide the Verdict, and ordered a Nonſuit to be returned, 458

On a Point reſerved upon the Statute of Hue and Cry, the Court divided in Opinion, whether Plaintiff ſhould recover for what was well deſcribed in his Advertiſement, *Page* 458

Though by 43 *Eliz.* no Proviſion is made for retaining the neceſſary Expence of a Diſtreſs and Sale, yet the Defendant may juſtify deducting for the ſame, 459

Verdict ſet aſide, the *Venire* being returnable at a Day ſubſequent to the Aſſizes, 460

In Action by Attorney for Fees, held the Attachment of Privilege, and not the *Placita*, is proper Evidence to ſhew the Commencement of the Suit, 461

Where ſeveral Iſſues joined, if enough is found for the Court to give Judgment upon, no *Venire facias de novo* ought to iſſue, 461

In Action *Qui tam* on 43 *Eliz.* for ſetting up a fraudulent Judgment, Court cannot give Leave to compound, 462

Point reſerved at Trial, whether a Bond in the Condition whereof a Mortgage-Demiſe was contained, ſtamped with a treble Sixpenny Stamp, read in Evidence for Plaintiff, ought to have been admitted, for want of two treble Sixpenny Stamps, held rightly admitted, 463

Motion for a new Trial founded on a Variance between the Iſſue delivered and the Record, granted; (though Court did not think the Variance material) the Merits not having been tried; Coſts to attend the Event, 464

New Trial never granted in Actions on a Penal Statute, where Verdict

dict is found for Defendant, *Page* 466
On Motion to put off a Trial, Affidavits taken before a Vice-Conſul abroad, ſuffered to be read, 446
On a Point reſerved, held the *Placita* is no Evidence in caſe of a Tender, but an Original muſt be produced, 165
After Verdicts, Records of *Niſi prius* and Writs of *Hab. Corpora Jurat'*, being loſt by Aſſociate, Rule for new ones to be made out and returned, 466
Held that a Fine levied without any Declaration of Uſes, muſt reſult to the ancient Uſe, 467
Held that a Perſon convicted of Petit Larceny and whipped, was not a competent Witneſs to a Will, 467
Rule for a View never granted without Affidavit, except in Action of Waſte, 467
On Motion for a new Trial in Ejectment, the Judge reporting Verdict to be agreeable to Evidence in Part, and contrary in Part, Rule for Plaintiff to take Poſſeſſion of that Part only, as to which the Judge reported in Favour of the Verdict, 468
Rule for Plaintiff to have Leave to inſpect Information, and for Juſtice of Peace to produce it, and Conſtable produce Warrant on Trial, 468
One of Defendants dies after Iſſue joined, and before the Day of *Niſi prius*; if Suggeſtion of his Death, and Award of *Venire fa.* entred on the Roll after Trial, ſufficient, as no Continuances are neceſſary to be inſerted in the Record of *Ni. Pri.* 469
Damages given by Verdict, under 40 *s.* Defendant reſident in *Middleſex*, and liable to be ſummoned to the County Court; Leave given to Defendant to enter a Suggeſtion of the Fact on the Record, to prevent Plaintiff from having Coſts, and to give Defendant double Coſts by 23 *Geo.* 2. Plaintiff may traverſe it, *Page* 470
The like, tho' objected, that the *Stat.* 23 *G.* 2. extended only to Cauſes of Action accruing within the Juriſdiction of the County Court, 471
In Action for a Forfeiture on Turnpike Acts; Objection, that it was brought in the Informer's Name only, not *Qui tam*, tho' half the Sum forfeited given to the Truſtees, over-ruled, 471
Court will not determine on Motion and Affidavits, the Truth or Propriety of the Suggeſtion on the Roll; Plaintiff may traverſe or demur to it, 471
A Race Horſe diſtrainable for Rent at a Stable on *Barnett* Common, half a Mile diſtant from the Inn. Plaintiff has no Remedy but againſt the Inn-keeper, 472
In Treſpaſs for the Meſne Profits, the Action may be brought *in the Name of the Nominal Plaintiff* in Ejectment, after Judgment *by Default* againſt the caſual Ejector; the Coſts of the Ejectment may be inſerted in the Declaration, as conſequential Damages. And on the Trial it is ſufficient to give in Evidence the Judgment in Ejectment; the Writ of Poſſeſſion with the Return of Execution upon it, *the Defendant's Occupation of the Premiſſes*, the

Value of them during that Time, and *the Coſts of the Ejectment,* *Page* 472, 473

Defendant is not at Liberty to controvert either the Title or Poſſeſſion of Plaintiff in ſuch Caſe. And Action may be brought either in the Name of the Leſſor or Plaintiff in Ejectment, *ibid.*

Trover.

See **Coſts**, 129, 139

Variance.

ON *Nul tiel Record*, Variance of *Scurphee* in Judgment, and *Curphey* in Recognizance, fatal, 475

Et ſimiliter left out in Iſſue, but inſerted in Record, Verdict ſet aſide, 475

In Action on indorſed Note in the Iſſue 'twas *he the ſaid indorſed*, and in Record *he the ſaid* A. *indorſed*, Verdict ſet aſide, 476

John John Shorter in Declaration, and *John Shorter* in Iſſue, immaterial, 476

So where in Iſſue 'twas *Plaintiff* was indebted to Plaintiff, in Record *Defendant* was indebted, &c. and the other Places being right, 477

Venire returned with Twenty-four Jurors, *Habeas Corpora* with Forty-eight, Verdict ſet aſide, 485

Award of *Venire* was Twelve good, &c. and in the *Venire* itſelf Twelve free Men, &c. not material, 487

See **Trial**, 464

Venue and Venire Facias.

A *Venire* in *Engliſh* following the *Latin* Form (Twelve, &c.) good, *Page* 240

A Blank for the Return of the *Venire* in the Record not Cauſe for an Arreſt of Judgment, 486

Affidavit to change the *Venue* muſt be, that the Cauſe of Action, &c if any, &c. did ariſe, and not the Promiſes in the Declaration, &c. were made, 477

Muſt be poſitive, and not as he believes, 478

Affidavit that if the Words were ſpoken as in the Declaration, they were ſpoken, &c. held bad, the Words ſhould be mentioned, 480

Affidavit of one Defendant ſufficient, 482

Venue not be changed into a City (of *York*) nor County of *York*, becauſe the Cauſe did not ariſe in the County at large, 477, 482

But changed from *Norfolk* into *London*, 481

Not into a County-Palatine, 478

Nor into *Durham*, 341, 481

Changed from *London* to *Middleſex*, 487

Venue laid at *Leek*, without ſaying in the County aforeſaid, good, 481

Norfolk in the Margent, *Venue* laid at *Norwich*, Inquiry executed by the Sheriffs of *Norwich*, good, for the County in the Margent will help, but not hurt, 483, 484

Not to be changed *after* Order for Time to plead, nor even after a Summons,

Summons, but may after Order for Imparlance, *Page* 350, 478, 481, 485, 486, 487
May after Order for Time, per Reg. Mich. 16 *Geo.* 2.
May move to change, *&c.* after Time to perfect Bail, 483
Attorney not ſuing by Attachment, or not declaring in Perſon, has no Privilege, 479
But if he ſues as Attorney, may lay his Action in *Middleſex*, even in Aſſault, 479, 487
Action againſt Attorney need not be laid in *Middleſex*, 482
Serjeant at Law, unleſs he ſues by Writ of Privilege, can't keep the *Venue* in *Middleſex* againſt the uſual Affidavit being made, 484
Action againſt Attorney, *Venue* changed without Coſts of a new Bill, 485, 486
Not to be changed on a Promiſory Note, 345, 480, 483, 485
Nor on Bill of Exchange, 487
Nor in *Scandalum Magnatum*, 482
See **Amendment**, 11, 12, 19, 488
Jury, 488
Trial, 460, 461
Venue never changed into a County Palatine, 488
Denied from *Yorkſhire* into the City of *York*, 489
Judge's Summon or Order for Time to plead, to be no Bar to a Motion to change the *Venue*, 489
Venue refuſed to be changed from *London* into *Kent*, upon Affidavit that the Cauſe of Action accrued within the City of *Canterbury*, 489
Venue changed, though Motion for Rule to ſhew Cauſe not made till laſt Day of laſt Term, Declaration being delivered ſo late that Defendant could not apply ſooner, 489
Venue refuſed to be changed from *Yorkſhire* into *Weſtmorland*, 490
Refuſed, where Declaration contained *inter al'* a Promiſory Note, on which Plaintiff undertook to give Evidence, at Peril of a Nonſuit, *Page* 491, 492
Refuſed in Action of Covenant on Deed for Nonpayment of Rent, 491
Venue may be changed in all Actions in their Nature Tranſitory, except in Caſes of Privilege, Specialty, Promiſory Note, or Bill of Exchange, 491
Venue, where changed upon reading the Declaration, without the uſual Affidavit, 492
After Motion to change the *Venue*, but before Rule made abſolute, Defendant by Miſtake put in Plea, held no Waiver of the Rule, *&c.* 492
Venue refuſed to be changed from *London* into *Eſſex*, Defendant by a Judge's Order for Time to plead having conſented to rejoin *gratis*, and take Notice of Trial in *London*, 493
Venue changed from *Middleſex* to *Monmouthſhire*, in Action againſt the late Sheriff, the Jury Proceſs to be returned by the Coroners, the Under-Sheriff having been Under-Sheriff to Defendant, 493
On Motion to change the *Venue* from *Middleſex* into *Worceſterſhire*. Action retained in *Middleſex* in right of Plaintiff's Privilege as an Attorney, tho' the Attachment of Privilege was not a *Teſtat'* out of *Middleſex*, 493
View. See **Trials**, &c. 467

Uſury.

See **Judgment**, 277
Warrant of Attorney, 52

Warrant

Warrant of Attorney. Vide **Judgment.**

WARRANT of Attorney by one who practiced as an Attorney good, tho' no Attorney preſent; otherwiſe if Plaintiff is an Attorney, *Page* 37
Two Plaintiffs, one dies, Survivor may enter Judgment by Leave, 40
Where a Warrant is Twenty Years old, Rule to enter Judgment muſt be only *Niſi*, *&c.* 41
Plaintiff a Lunatick, Affidavit of Perſon who received the Intereſt, ſufficient, 42
Attorney's Clerk preſent at Execution of Warrant not ſufficient, 42
Judgment entered on an old Warrant of Attorney on Affidavit of Defendant's being alive in *Jamaica*, Four Months before, 256

See **Judgment,** 270, 277

Warrant executed by Defendant in Cuſtody, in Preſence of an Attorney of *B. R.* ſufficient, 44
Rule to enter Judgment at Suit of Executor, on a Warrant to enter, *&c.* at Suit of Teſtator, his Heirs, Executors, *&c.* 44
Warrant to enter Judgment at Suit of two, Motion to enter Judgment at Suit of the Survivor, denied, 45

But granted in *B. R.* and here ſince, 48, 53
Where Leave to enter Judgment may be given by a Treaſury-Rule, and where not, 47
Judgment and Warrant of Attorney on Uſurious Contract, ſet aſide, *&c.* *Page* 25

Witneſs. See **Attachment,** 497
Trials, &c. 467

Writ. Vide **Proceſs.**

Addenda.

RULE of *Eaſter* Term, 1762, that no Record, or Writ of *Niſi prius* ſhall be received at Sittings for *Middleſex*, after Term in *C. B.* unleſs delivered to, and entered with the Marſhal within two Days after the laſt Day of every Term. The like in *London*, unleſs ſo delivered and entred the Day before the Day of Adjournment, 494
Rule of *Hilary* 7 *Geo* 3. that all Rules on Sheriff of *Middleſex*, or Sheriffs of *London*, to return Writs or bring in the Body of Defendant, ſhall be to do ſo within four Days next after Service, 494
Plaintiff ſues *Qui tam* in Proceſs, declares for himſelf only irregular, for the *Variance* goes to the Nature of the Demand. Where that not altered, ſuperfluous Deſcription of Plaintiff does not hurt. Not neceſſary to deſcribe Plaintiff, as Plaintiff *Qui tam* in Proceſs, 494, 495

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